

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

**ASARCO LLC,**

Plaintiff,

**NL INDUSTRIES, INC., et al.,**

Defendants.

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Case No. 4:11-cv-00864 JAR

**DEFENDANT UNION PACIFIC RAILROAD COMPANY'S  
RESPONSE TO ASARCO LLC'S *LONE PINE* BRIEF**

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## I. INTRODUCTION

Contamination in southeastern Missouri (“SEMO”) from centuries of lead mining and processing is pervasive. Plaintiff Asarco LLC’s (“Asarco”) Settlement Agreement Regarding the Southeast Missouri (SEMO) Sites (“Asarco Settlement”)<sup>1</sup> covers a small, defined portion of the numerous areas of contamination from these activities in SEMO. To meet its prima facie burden, Asarco must demonstrate a nexus between contamination in the specific areas for which it has settled its environmental liability and railroad rights-of-way (“ROW”) for which Asarco alleges that the Union Pacific Railroad Company (“Union Pacific”) has liability. Asarco has not shown that there is any connection between railroad ROW and the areas for which Asarco has settled. No response costs have been incurred on railroad ROW—by Asarco or EPA—and Asarco has presented no evidence of releases on or emanating from Union Pacific ROW that has caused Asarco to incur response costs anywhere. The Second Amended Complaint should be dismissed as to Union Pacific, with prejudice.

## II. BACKGROUND

### A. Asarco Reduced Its Liabilities by Over Sixty Percent Through Bankruptcy, But Seeks Further Financial Gain Through CERCLA “Contribution” Actions.

This case is just another step in the business strategy of Grupo Mexico, S.A.B. de C.V. (“Grupo”) to maximize the economic value of Asarco.<sup>2</sup> The story begins in November 1999 with the leveraged buyout of ASARCO by Grupo for over \$2 billion. *Asarco LLC v. Ams. Mining Corp.*, 396 B.R. 278, 300-301 (S.D. Tex. 2008). Grupo then transferred its acquisition

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<sup>1</sup> See *In re ASARCO LLC*, Motion for Order Approving Settlement Agreement Among ASARCO LLC, the United States, the State of Missouri, the Doe Run Company, and DR Land Holdings LLC Regarding the Southeast Missouri (SEMO) Sites, Case No. 05-21207, Bankr. Doc. 7070 (S.D. Tex. Mar. 3, 2008) (for convenience henceforth all documents from the bankruptcy case will be referred to as “Bankr. Doc. \_\_\_”); Settlement Agreement Regarding the Southeastern Missouri (SEMO) Sites, Bankr. Doc. 7070-2; and May 18, 2008 Order Approving Settlement, Bankr. Doc. 7674.

<sup>2</sup> ASARCO was incorporated in New Jersey and headquartered in Phoenix, Arizona. In February of 2005, ASARCO Incorporated was merged into ASARCO LLC, a Delaware limited liability company.

debt to Asarco. *Id.* at 301. Asarco owned the controlling interest (54.18%) in Southern Peru Copper Company (“SPCC”) through Class A Common Stock, “Founder’s Shares” with enhanced voting rights and a value of over \$600 million. *Id.* at 300, 305. Grupo restructured to protect and maintain its own control of the SPCC stock and created a series of four wholly-owned subsidiaries. *Id.* at 302. After the restructuring, Grupo owned Americas Mining Corporation (“AMC”) as its wholly-owned subsidiary, which wholly owned Asarco, which wholly owned Southern Peru Holding Company (“SPHC”) (to hold the Founders Shares), which owned the majority of SPCC stock. *Id.* To address mounting financial problems and asbestos and environmental claims (exacerbated by the Grupo buyout debt), in early 2003 at the apparent behest of Grupo/AMC, Asarco sold the SPCC stock to AMC. *Id.* at 303. Asarco’s independent board members and financial advisors resigned in opposition to the sale, which they believed to be below market value. *Id.* at 313. Stripped of its “crown jewel,” in 2005 Asarco filed for Chapter 11 bankruptcy protection. *Id.* at 314-315.

Concurrently with bankruptcy reorganization, Asarco sued AMC for fraudulent transfer to recover the Founder’s Shares. *Id.* at 297. The United States District Court for the Southern District of Texas held the sale was a fraudulent transfer and awarded Asarco return of the SPCC stock, then worth an estimated \$7 billion, and over \$1 billion in damages. *Asarco LLC v. Ams. Mining Corp.*, 404 B.R. 150, 183 (S.D. Tex. 2009). Asarco’s judgment was estimated to be worth more than \$8 billion. *In re Asarco LLC*, 420 B.R. 314, 332 n.29 (S.D. Tex. 2009). In the bankruptcy, Asarco, Inc. and AMC’s reorganization plan<sup>3</sup> (“Plan”) included the release of liability of AMC for Asarco’s fraudulent transfer action. *Id.* at 326. This Plan was confirmed on November 13, 2009, and went into effect on December 9, 2009. Having put Asarco into

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<sup>3</sup> Asarco Incorporated and Americas Mining Corporation’s Seventh Amended Plan of Reorganization for the Debtors Under Chapter 11 of the United States Bankruptcy Code, Bankr. Doc.12728.

bankruptcy, AMC bought Asarco back out of bankruptcy for less than \$2 billion, discharging over \$6 billion in estimated environmental and asbestos liabilities. Not satisfied with its liability reduction, post-bankruptcy Asarco has engaged in a massive national litigation campaign against various parties, including pursuing more than a dozen “contribution” suits under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 et seq.) (“CERCLA”). This case is one of the “contribution” actions.

### **B. The SEMO Litigation**

The Court has recognized that this is not a typical CERCLA action, as Asarco’s bankruptcy compelled environmental regulators to resolve claims prematurely against Asarco for response costs and natural resources damages (“NRD”). Doc. 141, p.3. This action commenced on May 12, 2011, when Asarco filed its original Complaint asserting CERCLA contribution claims for six sites in four counties against various defendants but not against Union Pacific. Doc. 1. On September 14, 2011, Asarco filed its First Amended Complaint (“FAC”), adding Union Pacific as a defendant for the same six sites in its original Complaint. Doc. 9. Union Pacific moved for dismissal or clarification of the FAC, Doc. 51, and in response Asarco filed its Second Amended Complaint (“SAC”) on February 9, 2012. Doc. 78. Union Pacific filed a pre-discovery motion for summary judgment on May 29, 2012. Doc. 101. Defendants other than Union Pacific requested a full indefinite stay in this matter on April 12, 2012 and May 29, 2012, Docs. 90, 107, 110. Union Pacific opposed a full stay, contending that it is not responsible at the facilities for which Asarco has settled its environmental liabilities. Doc. 114 ¶10. In lieu of a



full stay, Union Pacific requested that the Court enter a *Lone Pine* order,<sup>4</sup> limiting discovery and focusing early litigation on Asarco's demonstration of a prima facie case on liability. Doc. 114.

On March 11, 2013, the Court granted a partial indefinite stay on the damages/apportionment phase of this case, denied defendants' dispositive motions without prejudice as premature, and entered its initial *Lone Pine* order. Doc. 141. In light of later discovery-related motions, the Court clarified its order on November 19, 2013. Doc. 189 ("*Lone Pine Order*"). All defendants except Union Pacific either settled or stipulated to prima facie liability. Docs. 170, 191, 194, 195. As such, ASARCO LLC'S *Lone Pine* Brief On CERCLA Liability of Union Pacific Railroad Company, Doc. 214 ("*Brief*"), is focused on establishing Union Pacific's purported liability—but only as to sites in two of the four counties addressed in the SAC.

### C. The "SEMO Sites" in the Asarco Settlement and in Asarco's Brief

The Asarco Settlement is separated into the following areas: (1) The Big River Mine Tailings/St. Joe Minerals Corp. Site, located in St. Francois County, Missouri; (2) the Federal Mine Tailings Site, also in St. Francois County, Missouri; (3) the Madison County Mines Site, encompassing the Catherine Mine site, in Madison County, Missouri; (4) the West Fork Mine/Mill Property, in Reynolds County, Missouri; (5) the Sweetwater Mine and Mill Property, in Reynolds County, Missouri; and (6) the Glover Smelter Property, in Iron County, Missouri. See Ex. C to Br., Bankr. Doc. 7070-2, p.1 ¶ 1 (the "Asarco Settlement Sites" or "Sites"). The

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<sup>4</sup> In *Lore v. Lone Pine Corp.*, No. L 33606-85, 1986 N.J. Super. LEXIS 1626 at \*3-4, \*8 (N.J. Super. Ct. Nov. 18, 1986), the court required plaintiffs to make a prima facie showing of exposure and causation before full discovery was permitted.

Asarco Settlement amounts represent Asarco's negotiated apportioned damages of the estimated total \$707 million joint and several damages figure across the five Sites.<sup>5</sup>

Asarco has conceded that Union Pacific has no liability for three of the above six Sites. The SAC asserts claims against Union Pacific for all of the above-listed Sites. In its Brief however, Asarco states that only the three Sites located in St. Francois and Madison County are at issue: the (1) Big River Mine Tailings/St. Joe Minerals Corp. Site; (2) Federal Mine Tailings Site; and (3) Catherine Mine/Madison County Site. *See Br. at p.1*, n.1. Asarco has presented no evidence, briefing, or expert opinion for the three sites in Reynolds and Iron counties. Asarco has not met its burden as to these latter three Sites.<sup>6</sup> Defendant Union Pacific Railroad Company's Response to Asarco LLC's *Lone Pine* Brief ("Response") will address only the Asarco Settlement Sites located in St. Francois and Madison counties.

#### 1. Catherine Mine/Madison County

EPA divided the Madison County Mines Site into seven separate operable units ("OUS").<sup>7</sup> Asarco's liability in Madison County related to both OU3 (county-wide residential remediation)<sup>8</sup> and OU5 (Catherine Mine area).<sup>9</sup> The Catherine Mine area consists of four chat

<sup>5</sup> Ex. 4, Transcript of Motion Hearing, Bankr. Doc. 7748, 9:20-10:10 (the settlement amount represents a negotiated figure for apportionment of total damages at the Sites).

<sup>6</sup> Union Pacific has separately filed for summary judgment on statute of limitations grounds and regarding the total absence of proof concerning the sites in Reynolds and Iron counties. Doc. 220 (Jul. 16, 2014).

<sup>7</sup> *See Ex. 5*, 2012 Record of Decision ("ROD") for Catherine Mines and Skaggs Tailings Subsites Operable Unit 05, pp.7-8 ("OU5 ROD"), available at [http://www.epa.gov/region7/cleanup/npl\\_files/madison\\_county\\_mines/record\\_of\\_decision\\_ou5.pdf](http://www.epa.gov/region7/cleanup/npl_files/madison_county_mines/record_of_decision_ou5.pdf) (last accessed Jul. 14, 2014) (listing Madison County OUS as: OU1 – Northern Madison County Unit, comprised of Mine La Motte Tailings and other mines and facilities; OU2 – Anschutz Subsite, comprised of Madison Mine and related areas; OU3 – Madwide Residential – which includes contaminated soils countywide and a separate processing and tailings area; OU4 – Conrad Tailings and related areas; OU5 – the Catherine/Skaggs Piles and their associated waterways; OU6 – Silver Mines and related areas; and OU7 – Little St. Francois River Watershed, which includes responses for water courses not addressed in the other OUs).

<sup>8</sup> Ex. 6, Excerpts of Proffer of Jeffrey Zelikson in Support of Debtor's Settlement Agreement Regarding the Southeast Missouri (SEMO) Sites, Bkr. Doc. 7636, p. 3 ¶7 ("Zelikson Proffer for Asarco").

<sup>9</sup> *See Ex. 7*, Supplemental Proof of Claim of the United States on Behalf of the United States Environmental Protection Agency, the Department of Agriculture, the Department of the Interior, and the United States Section of the International Boundary and Water Commission, Against ASARCO, LLC, Claim 10746 (Jul. 31, 2006), ¶¶115 to

and tailings piles covering approximately 27 acres, an estimated two-mile pathway of a former industry-owned private aerial tramway that was used for transporting mining material (“Catherine Tramway”), and related water impacts. Ex. 5, OU5 ROD, p.9 ¶4. Asarco’s additional Madison County liability is addressed by OU3, the county-wide residential remediation efforts, but is focused on the residential areas under the Catherine Tramway. *Id.* at p.9 ¶3.

## 2. Federal Mine Tailings/St. Francois County

The St. Francois County mine sites include at least eight sources of mine waste.<sup>10</sup> Asarco had CERCLA liability in St. Francois County at two of these eight source mining waste piles: (i) the Federal Mine Tailings Site (now part of St. Joe State Park) and (ii) the Big River Mine Tailings Site (also known as the Desloge Pile). The Asarco Settlement includes these two sub-sites and related county-wide residential remediation.<sup>11</sup>

### III. **THE COURT’S *LONE PINE* ORDER AND THE PRIMA FACIE SHOWING REQUIRED FOR CERCLA LIABILITY**

Pursuant to this Court’s *Lone Pine* Order and Eighth Circuit law, to establish a prima facie case for contribution, Asarco must prove “(i) Defendants fall under one of four categories of ‘covered persons;’ (ii) the site in question is a ‘facility;’ (iii) there was a ‘release’ or ‘threatened release’ of a ‘hazardous substance’ at the facility; and (iv) the release caused it to

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119, (“US Response Costs POC”); Ex. 8, Proof of Claims for the Missouri Dept. of Natural Resources, Claim 11116 (Aug. 1, 2006), p. 5 (“MDNR POC”)(itemizing NRD for Catherine Mine portion of Madison County at over \$10 million and listing no other damages for Madison County).

<sup>10</sup> These piles include Hayden Creek, Leadwood, Bonne Terre, Elvins, National, Big River/Desloge, Federal, and Doe Run. Ex. 9, Focused Remedial Investigation for Mined Areas in St. Francois County, Missouri, p. 1-1.

<sup>11</sup> See Ex. 7, US Response Costs POC, ¶¶ 64-73; Ex. 8, MDNR POC, p. 5 (itemizing NRD for Federal Mine Tailings at just under \$60 million); Ex. 6, Zelikson Proffer for Asarco, p.6, ¶14; Ex. C to Br., Asarco Sites Settlement, Bankr. Doc. 7070-2, p.1 (listing the settlement sites and referencing NPL listing for Big River Tailings), p.2 ¶1 (incorporating proofs of claims as to Asarco liabilities in SEMO area); Ex. 10, NPL Site Narrative for Big River Mine Tailings, *available at* <http://www.epa.gov/superfund/sites/npl/nar1336.htm> (last accessed Jul. 14, 2014) (describing a separate mining waste area operated by St. Joe Mineral Corp. and where in 1977 an estimated 50,000 cubic yards of tailings slumped into the Big River during a heavy rain, which spurred creation of the first St. Francois County listing on the NPL, 57 Fed. Reg. 47180 (Oct. 14, 1992)).

incur response costs.” Doc. 189 (citing Laidlaw Waste Sys., Inc. v. Mallinckrodt, Inc., 925 F.Supp. 624, 629 (E.D. Mo. 1996)).

The Eighth Circuit recognizes “that the right to contribution under [CERCLA] § 113 is more limited than the right to recover costs under § 107(a).” Morrison Enters., LLC v. Dravo Corp., 638 F.3d 594, 603 (8th Cir. 2001). Unlike the strict, joint and several liability of § 107, liability under § 113 is contingent on whether a party has paid more than its proportionate share. Id. Additionally, for a contribution claim to exist there must be common or shared liability. United States v. Atl. Research Corp., 551 U.S. 128, 138–139 (U.S. 2007) (stating contribution requires common liability among liable parties). Because of these proportionality and commonality requirements, the “facility” at issue—in this case allegedly railroad right-of-way—must be within the site or area in which plaintiff incurred response costs and in which both parties have some liability. See Morrison Enters., 638 F.3d at 606–607 (shared liability exists where both parties have contributed to the contamination at the subject site).<sup>12</sup> CERCLA also requires a plaintiff in a contribution action to demonstrate that an alleged release by the defendant caused the incurrence of response costs by plaintiff. See Farmland Indus. v. Morrison Quirk Grain Corp., 987 F.2d 1335, 1340 (8th Cir. 1993)(internal citations omitted). Asarco must demonstrate the existence of a causal nexus between an alleged Union Pacific release and Asarco’s response costs at a site for which Asarco has settled. Control Data Corp. v. S.C.S.C., 53 F.3d 930, 935 n.8 (8th Cir. 1995).

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<sup>12</sup> Even when contribution claims reach the allocation phase, courts have dismissed after finding that a defendant’s release was negligible and did not materially contribute to the site contamination. See Gopher Oil Co. v. Union Oil Co., 955 F.2d 519, 527 (8th Cir. 1992) (upholding district court finding of zero liability for party who “did not materially contribute to the contamination”); see also Acushnet Co. v. Mohasco Corp., 191 F.3d 69, 72 (1st Cir. 1999) (dismissing contribution claims because defendant’s alleged contamination was too small relative to plaintiff’s share).

Asarco admits that it must demonstrate its prima facie case by a preponderance of the evidence. Accordingly, Asarco must establish each element “by the greater weight of the evidence” and prove that its position “has more convincing force and is more probably true and accurate.” *Smith v. United States*, 726 F.2d 428, 430 (8th Cir. 1983). Mere speculation cannot satisfy Asarco’s burden. *Stewman v. Mid-South Wood Prods., Inc.*, No. 91-2047, 1992 U.S. Dist. LEXIS 17534, at \*24 (W.D. Ark. Jul. 28, 1992) (finding plaintiff did not establish there had been a release of hazardous substances because plaintiff’s conclusions were “based upon speculation and are not supported by a preponderance of the evidence”).

#### **IV. ASARCO FAILED TO MAKE A PRIMA FACIE CASE OF CERCLA LIABILITY AGAINST UNION PACIFIC**

##### **A. Asarco Has Incurred No Costs to Remediate Union Pacific ROW or Alleged Releases from ROW**

###### **1. Asarco Incorrectly Relies on the Causation Standard of §107 instead of §113**

Asarco erroneously relies on § 107 case law to support a strict liability approach to avoid the causation element of its prima facie showing. The Eighth Circuit does not apply the § 107 strict liability standard for a § 113 contribution claim.<sup>13</sup> See *Farmland Indus.*, 987 F.2d at 1340.

In *Farmland*, the Eighth Circuit explained that, in a § 107 action, liability for response costs “is a matter of strict liability” and “is not dependant [sic] on any showing of causation or fault.” *Id.* at 1339. In contrast, the Eighth Circuit held that a causation analysis in a contribution action is essential. *Id.* “The issue of whether [the defendant] should be liable to [the plaintiff] for any expenses incurred as a result of contamination at the subsite is inextricably linked to causation.” *Id.* A plaintiff “cannot predicate a claim for contribution or indemnity solely upon

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<sup>13</sup> However, even a party targeted under § 107(a) may escape liability altogether if it can demonstrate that the hazardous substances it released did not cause the incurrence of response costs. *United States v. Alcan Aluminum Corp.*, 964 F.2d 252 (3d Cir. 1992).

section 9607(a) liability . . . but must also prove causation.” *Id.* at 1340. Thus the strict liability standard applied in § 107 actions is inapplicable here. *See also United States v. Bliss*, 667 F. Supp. 1298, 1311 (E.D. Mo. 1987) (explaining that any seeming unfairness created by relaxed causation standard in § 107 actions is “mitigated by permitting the defendants to sue other [PRPs] for contribution”).

Even under § 107, the Eighth Circuit requires a causal nexus between a release specifically attributed to the defendant and the plaintiff’s response costs. *Control Data Corp.*, 53 F.3d at 925 n.8 (“[W]hen there is an actual release, a plaintiff must establish a causal nexus between that release and the incurrence of response costs.”); *United States v. Dico, Inc.*, 136 F.3d 572, 578 (8th Cir. 1998) (same). This causal nexus cannot be predicated on a showing of liability in a different operable unit. *Dico*, 136 F.3d at 578 (holding that any response costs incurred in relation to “any other operable unit within the site . . . are of no consequence”). Further, a party’s unsupported hypothesis regarding the migration of a hazardous substance cannot resolve the question of causation. *Id.* at 579 (holding that the EPA’s hypothesis regarding the migration of soil contamination to ground water contamination was insufficient to establish causation).

2. There is No “Causal Nexus” Between Alleged Union Pacific Releases and Asarco Response Costs

There is no causal nexus between any release alleged to be attributable to Union Pacific and the incurrence of response costs for the Asarco Settlement Sites. The Sites do not encompass railroad ROW and Asarco admits it has not incurred any response costs on railroad ROW. Asarco focuses on railroad lines not owned by Union Pacific or its predecessors and locations for which Asarco did not settle. Since Asarco cannot satisfy this required prima facie element, Asarco’s showing fails.

First, the Asarco Settlement Sites do not encompass railroad ROW. The EPA has clearly stated that any contamination present on railroad ROW in Southeast Missouri will be addressed in separate cleanup decisions. Ex. X to Br., EPA Letter. Further, EPA has also indicated that if and when cleanup action is undertaken on railroad ROW, it will be addressed “in separate operable units in both [Madison and St. Francois] counties.” Ex. Y to Br., EPA Email. Union Pacific could not have caused Asarco to incur response costs in an operable unit that has not yet been defined and was not a part of the Asarco Settlement. *See Dico*, 136 F.3d at 578.

In *Dico*, soil and groundwater contamination were each treated as a distinct operable unit at a single site. *Id.* The Eighth Circuit held that the defendant conceding soil contamination was not sufficient to prove causation as to response costs related to the groundwater contamination. *Id.* Because the EPA in *Dico* sought only response costs related to groundwater and not soil contamination “[a]ny response costs the EPA might have incurred in relation to [soil contamination] or any other operable unit within the site, and therefore evidence of [the defendant’s] alleged admissions regarding soil contamination within the site, are of no consequence.” *Id.* Here even if Union Pacific conceded ownership and contamination of all railroad ROW—which it does not—any potential liability in a new railroad ROW operable unit is of no consequence to the question of causation and liability at the Asarco Settlement Sites.

Second, the only rail lines which Asarco alleges are adjacent to any specific SEMO area tailings piles—Bonne Terre, Leadwood, and Columbia Mine/Federal Tailings—are irrelevant to the questions of Asarco response costs and Union Pacific liability. Br. at 21. Asarco did not settle any liability for the Bonne Terre and Leadwood sites and has expended no response costs at either location.<sup>14</sup> Additionally, any railroad liability for the historic Crawley Branch, which

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<sup>14</sup> *See* n.11, *supra* (describing Asarco’s liability in St. Francois County as relating to the Federal and Big River (Desloge) sites and county-wide remediation). *See also Ex. 11*, Excerpts of EPA CERCLIS Report and Data Files

ran in the direction of the Columbia Mine/Federal Tailings, ended with the 1945 dissolution of the Mississippi River & Bonne Terre Railway (“MRBT”). *See* § IV.C.3.b, *infra*. MRBT is not a Union Pacific predecessor entity and Union Pacific never owned or operated the Crawley Branch, so it is not relevant. *Id.* Union Pacific cannot have caused Asarco to incur response costs where it in fact incurred none, or where Union Pacific never owned or operated on the identified ROW.

Finally, Asarco cannot recover response costs because it admits it incurred no response costs on ROW prior to filing suit.<sup>15</sup> Instead, Asarco speculates that in future actions “EPA will *likely* expend funds received from Asarco’s settlement payment to address contamination of abandoned rail lines in SEMO.” *Br. at 22* (emphasis added). However, the “mere possibility” that response costs will be incurred is not sufficient. *Trimble v. Asarco, Inc.*, 232 F.3d 946, 958 (8th Cir. 2000), *overruled on other grounds by Exxon Mobil Corp. v. Allapath Servs.*, 545 U.S. 546 (2005). “Under CERCLA’s scheme for private action, response costs may not be recovered when there has been no commitment of resources for meeting these costs. Section 9607(a)(4)(B) permits an action for response costs ‘incurred’--not ‘to be incurred.’” *Id.* (quoting *In re Dant & Russell, Inc.*, 951 F.2d 246, 249 (9th Cir. 1991)). Unless a plaintiff “incurred costs *prior to filing suit*, they cannot maintain a claim under CERCLA.” *Wilson Rd. Dev. Corp. v. Fronabarger Concreters, Inc.*, 971 F. Supp. 2d 896, 910 (E.D. Mo. 2013) (emphasis in original). Asarco has committed no resources to address alleged contamination on ROW and offers only supposition

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List 11—Responsible Parties at CERCLIS Sites, p. 169 of Region 7 report (listing Doe Run Resources Corp. (“Doe Run”) as the responsible party at the Leadwood site, not Asarco), p. 150 of Region 7 report (listing Doe Run, the City of Bonne Terre, and private individuals as responsible parties at the Bonne Terre site, not Asarco), p. 156 of Region 7 report (listing Doe Run as the responsible party at Elvins Mine Tailings, not Asarco), *available at* <http://www.epa.gov/superfund/sites/phonefax/products.htm> (last accessed Jul. 14, 2014).

<sup>15</sup> *Ex. 12*, Asarco 30(b)(6) Deposition (“Pfahl”) 173:10-173:14 (Asarco’s corporate representative admitted Asarco is not aware of any Asarco money being used for Union Pacific property or railroad ROW); *see also Ex. 13*, Rosasco 210:21-211:7 (admitted he is not aware that any remediation of Union Pacific right-of-way is being performed); *Ex. 14*, Robbins 102:22-103:5 (admitted he has no knowledge of any money spent by EPA or Asarco remediating railroad ROW).



regarding the possibility of future action by EPA and the use of Asarco funds. Asarco has never “incurred” any response costs related to Union Pacific ROW.

Asarco Settlement Sites do not encompass railroad ROW and Asarco admits it incurred no response costs to remediate ROW. Mere speculation that response costs will be incurred at some point in the future does not satisfy CERCLA’s requirement that a release attributable to Union Pacific caused Asarco to actually incur response costs. Asarco’s prima facie showing on this element fails.

### **B. Union Pacific ROW is Not a Facility**

Union Pacific is not an owner or operator of a facility for purposes of Asarco’s contribution claim because the “facilities” that Asarco alleges Union Pacific operates or operated—rail lines throughout Southeastern Missouri—are not the relevant SEMO-area facilities where the governments are remediating property, or for which Asarco paid to settle its liability. A “facility” is the “place where the hazardous substances were disposed of and where the government has concentrated its cleanup efforts...” *United States v. Ne. Pharm. & Chem. Co., Inc.*, 810 F.2d 726, 743 (8th Cir. 1986) (“*NEPACCO*”) (emphasis added). In *NEPACCO*, the court rejected efforts to impose owner or operator liability on NEPACCO for cleanup of an off-site location where it had shipped its hazardous wastes. *Id.* Reading the plain language of § 107(a)(1), the court found that while the alleged potentially responsible parties (“PRPs”) may have been “owners and operators” of property, they did not own or operate the site where the government incurred costs. *Id.*; see also *United States v. Wash. State DOT*, No. 08-5722RJB, 2010 U.S. Dist. LEXIS 68100, at \*14-17 (W.D. Wash. 2010) (presence of two nearby contaminated sites “does not mean the two sites combine into one site to form a single facility;” instead “for liability to attach . . . under CERCLA section 107(a)(1), [defendant] must be the owner or operator of the facility in which the United States incurred a response cost.”) The

government has never concentrated its cleanup efforts at any Union Pacific ROW, nor relevant abandoned ROW. The railroad ROWs relied upon by Asarco in this case cannot be a “facility” for the purposes of CERCLA.

As explained in greater detail below, Asarco cannot demonstrate that there has been a release of hazardous substances on Union Pacific ROW or predecessor ROW.<sup>16</sup> Asarco’s evidence to this effect consists only of a draft report prepared years ago for Doe Run and purported chat samples from unknown locations taken by an unknown person that are (1) unreliable, (2) do not reflect conditions within or near Asarco Settlement Sites, or (3) do not reflect testing of ROW owned by Union Pacific or for which Union Pacific has successor liability. In the absence of reliable and relevant evidence, Asarco cannot satisfy its burden to show that hazardous substances have come to be located on Union Pacific ROW.

The EPA has not addressed any alleged contamination on railroad ROW, as it has implemented a strategy to “address[] risk to human health first” including the “large mine waste piles that are the primary source of lead contamination.” Ex. X to Br., EPA Letter. In any case, the EPA/Asarco correspondence does not identify any Union Pacific ROW that EPA plans to address in the future. Every Asarco witness has admitted that Asarco is not aware of any funds spent to remediate railroad ROW within or near the Sites.<sup>17</sup> And Union Pacific has never been contacted by the EPA regarding cleanup of Southeast Missouri ROW or liability at the Sites. Ex. 15, Grimalia 37:20-37:24. Asarco also admits that EPA has not remediated areas at and around rail lines in Southeast Missouri. Br. at 22.

Asarco cannot show that any Union Pacific ROW is a location where hazardous substances have come to be located and is a location where the EPA has concentrated its cleanup

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<sup>16</sup> See § IV.D, *infra* (discussing the inadequacies in the evidence regarding an alleged “release”).

<sup>17</sup> See n.15, *supra*.

efforts. Thus, neither Union Pacific ROW, nor alleged predecessor ROW, constitutes a “facility” and therefore Asarco’s prima facie showing on this element fails.

**C. Union Pacific is Not a “Covered Person” at the St. Francois or Madison County Sites**

**1. Union Pacific is Neither a Current or a Former Owner at any Asarco Settlement Site Because Railroad ROW in Missouri are Easements**

CERCLA identifies a current “owner and operator of a vessel or a facility” as a potentially responsible party. 42 U.S.C. §§ 9607(a)(1). The statute defines an “owner and operator” as “any person owning or operating such facility.” 42 U.S.C. § 9601(20)(A)(ii). See United States v. Bestfoods, 524 U.S. 51, 56, 63 (1998) (noting statute is “defined only by tautology” and incorporating common law principles regarding corporate successor liability); Long Beach Unified Sch. Dist. v. Dorothy B. Godwin Living Trust, 32 F.3d 1364, 1368 (9th Cir. 1994) (same and applying statute’s “ordinary meaning”). The definition “owner or operator” includes common carriers such as railroads; however, a common carrier “acting as an independent contractor during such transportation . . . shall not be considered to have caused or contributed to any release during such transportation which resulted solely from circumstances or conditions beyond his control.” 42 U.S.C. § 9601(20)(B). Union Pacific is not a current owner of ROW within any SEMO site.<sup>18</sup> Further, under the applicable jurisprudence, discussed *infra*, both CERCLA and Missouri law, Union Pacific possesses easements and by legal definition is not a current “owner” of ROW in Southeast Missouri.

Union Pacific is neither a current or former owner of property under the plain meaning of § 9607(a)(2) because it did not own property in the Southeastern Missouri mining district. The SEMO-area ROW grants were easements, Ex. 2 Hawkins Decl. ¶5, and “[h]aving an easement

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<sup>18</sup> Ex. 16, Hawkins 45:7-9 (Mr. Hawkins, Union Pacific Director of Real Estate Operations, testified that he is not aware of an active Union Pacific rail line that is contiguous to a SEMO site).

does not make one an ‘owner’ for purposes of CERCLA liability.” Long Beach Unified Sch. Dist., 32 F.3d at 1370. See also Redevelopment Agency v. BNSF Ry., 643 F.3d 668, 679 (9th Cir. 2011) (drainage easement owned by railroads did not create owner liability because railroads did not own the property). “The only entity which owns the easement property in this sense is ... [the] holder of the fee interest in the land. . . .” Grand Trunk W. R.R. Co. v. Acme Belt Recoating, Inc., 859 F. Supp. 1125, 1131 (W.D. Mich. 1994). This interpretation follows CERCLA’s plain language, in which “Congress did not say ‘de facto owner,’ or ‘possessor,’ or ‘person with some incidents or attributes of ownership,’ as it has in other legislation. . . . Instead it used the unmodified term ‘owner’ which . . . when used alone, imports an absolute owner.” City of Los Angeles v. San Pedro Boat Works, 635 F.3d 440, 451 (9th Cir. 2011) (finding permit holder not an “owner” under CERCLA) (internal citations omitted). Courts also look to state substantive law on easements to determine that holding an easement is insufficient for CERCLA “owner” liability. Grand Trunk W. R.R., 859 F. Supp. at 1131 (citing Restatement of Property § 450(a) (1936) and noting that only the fee holder has “vested . . . ownership, dominion, or title of property”); Long Beach Unified Sch. Dist., 32 F.3d at 1168 (summarizing California law on easements). Here, Missouri common law dictates the same result: easement owners are legally distinct from owners in fee. Brown v. Weare, 152 S.W.2d 649, 655 (Mo. 1941) (“a railroad acquires an easement only and ‘the fee to the lands thus occupied continues to reside in the adjacent landowners.’”).

Asarco argues that rail lines constructed before 1871 were “typically” held in fee, without presenting any evidence of land patents for the SEMO area. Br. at 15. The statutes cited by Asarco for this proposition relate to lands in other states and are inapposite.<sup>19</sup> Moreover, many

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<sup>19</sup> One Act granted public lands to the State of Wisconsin to aid in the construction of railroads. Act Granting Public Lands to the State of Wisconsin to Aid in the Construction of Railroads, ch. 43, 11 Stat. 20 (1856); see also Act

of the railroads in the SEMO area were constructed after 1871; MRBT was not chartered until 1888.<sup>20</sup>

Even if a ROW easement interest were sufficient to establish current owner/operator liability, Union Pacific is not liable as a current owner for any abandoned railroad lines. Under Missouri law, SEMO-area abandoned railroad ROWs have reverted to the original fee simple owners. *See Horn v. Muckerman*, 307 S.W. 2d 482, 485 (Mo. 1957) (ownership of abandoned rail lines reverts to the fee holders “upon the abandonment of the easement.”) Unless there is clear evidence to the contrary as to ownership of the subservient estate, the abutting property owner at the time of abandonment becomes the owner of the unified estate free from the easement. *Weare*, 152 S.W.2d at 654-655. Thus, the relevant current owner/operators for any abandoned ROW parcels, assuming Asarco’s theory of continued release were valid, are the present individual fee title holders.

2. The Union Pacific Active Rail Lines are not in any of the Sites and Asarco has not demonstrated the presence of hazardous substances thereon, therefore Union Pacific is not a current owner

Union Pacific currently operates four active rail segments in St. Francois County:<sup>21</sup> the Desoto Subdivision, the Ste. Genevieve Line, the Bonne Terre segment, and the Monsanto segment (collectively, the “Active Rail Lines”). *Ex. 2*, Hawkins Decl. ¶6. However, none of these segments is relevant to the question of Asarco’s claim for contribution, as the Active Rail Lines are not within or in close proximity to a site for which Asarco settled liability. *Ex. 3B*, Active Rail Line Map; *Ex. 3*, Hansen Decl. ¶9. Further, Asarco has presented no evidence of

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Granting Lands to Aid in the Construction of Certain Railroads in the State of Wisconsin, ch. 80, 13 Stat. 66 (1864); Pacific Railroad Act of 1862, ch. 120, 12 Stat. 489 (authorizing Union Pacific to construct a railroad between Nebraska and the Pacific Ocean).

<sup>20</sup> *Ex. 17*, Excerpt from 1890 Poor’s Manual of Railroads, p.462.

<sup>21</sup> Union Pacific has never operated in Madison County. *Ex. 2*, Hawkins Decl. ¶7. The Belmont Branch, which ran through Madison County, was abandoned in 1972 and was never owned or operated by Union Pacific. *Id.* at ¶¶6E, 7 and *Ex. 2H*, Excerpt from *Missouri Pacific R.R. Co. Abandonment Between Bismarck and Whitewater, Mo.*, 342 I.C.C. 643, 645 (Fin. Dkt. 26353) (Aug. 16, 1972) (“Belmont Branch Abandonment”).

hazardous substances on the active segments; neither Asarco nor NewFields collected samples on active lines. Thus, even if the lines were proximate to the Asarco Settlement Sites, Asarco cannot demonstrate that they contain hazardous substances or are relevant to its contribution action. Even if the Active Rail Lines were proximal to the Asarco Settlement Sites, ROW does not constitute a “facility” under CERCLA. *See* § IV.B, *supra*. The Active Rail Lines are:

- The DeSoto Subdivision: The small portion of this line that passes through St. Francois County, near the county’s western border, is miles from any mining activity, waste pile, or Asarco Settlement Site. *See* Ex. 3B, Active Line Rail Map. At its closest point, the DeSoto Subdivision is 6.7 miles from the nearest tailings pile. Ex. 3, Hansen Decl. ¶9. Moreover, neither Asarco nor NewFields took ballast samples on the DeSoto Subdivision.<sup>22</sup>
- The Ste. Genevieve Line: This line runs from Bismarck, St. Francois County east to Ste. Genevieve, Ste. Genevieve County. Asarco’s mileage analysis focuses on only the portion of the line in St. Francois County. However, at its closest point, the line is 0.5 miles away from the Federal Mine Tailings and further from the Big River Mine Tailings/Desloge pile. Ex. 3, Hansen Decl., ¶9. It does not now enter, nor did it historically enter, any Site. Ex. 2, Hawkins Decl., ¶6B. Further, no ballast samples were taken by Asarco or NewFields on the Ste. Genevieve Line.
- The Bonne Terre segment: This segment runs from south of the City of Bonne Terre to Derby Junction, where the segment meets the Ste. Genevieve Line. *See* Ex. 3B, Active Line Rail Map. The Bonne Terre segment runs near, but not in,

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<sup>22</sup> *See* § IV.D, *infra*, for a discussion of Asarco’s proffered sample data.

any of the Bonne Terre mine waste piles. *See* n.18, *supra*. Asarco did not settle for liability in connection with the Bonne Terre site. *See* n.14, *supra*. No samples were taken by Asarco or NewFields on this segment.

- The Monsanto segment: This segment runs from the Bonne Terre segment at Hoffman Junction westerly toward Monsanto, Missouri. This segment is not proximate to any of the tailings piles or sites for which Asarco settled its liability, or any other mine waste piles in St. Francois County. No samples were taken by Asarco or NewFields on the Monsanto segment.

Mere presence of Union Pacific ROW in St. Francois County is not sufficient to support Union Pacific liability. Because three out of four of the Active Rail Lines are not close to and none are within the Sites,<sup>23</sup> Asarco has failed to demonstrate that the Active Rail Lines are relevant to the Court's determination.

3. Union Pacific is Not a Past Owner or Operator and is Not a Successor to Past Owners or Operators

- a) *Union Pacific was not an owner or operator during the relevant disposal period and therefore cannot be deemed a "past owner or operator"*

Union Pacific cannot be liable as a past owner or operator of any SEMO-area rail lines because it did not own or operate railroads in the region at the time of the relevant alleged "disposal"—here, the construction of rail lines using mine waste as ballast.<sup>24</sup> CERCLA renders liable as a former owner or operator "any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of . .

<sup>23</sup> *See* n.18, *supra*; Ex. 3, Hansen Decl. ¶9, Ex. X to Br., EPA Letter, Ex. Y to Br., EPA Email.

<sup>24</sup> To the extent Asarco alleges "disposals" by Union Pacific in SEMO other than through the construction of rail lines using chat, Asarco fails to make its prima facie case. Asarco makes passing reference to other "spills during the transportation of mining materials" (Br. at 2) but fails to provide any specific details or evidence—beyond supposition—of such spills, or that the alleged spills actually resulted in the release or threatened release of hazardous materials into the environment.

. from which there is a release, or a threatened release which causes the incurrence of response costs . . . .” 42 U.S.C. §§ 9607 (a)(2)-(4) (emphasis added). However, use of chat or mining material for railroad ballast or as construction material does not constitute disposal of a hazardous substance under CERCLA, because such material used as building material is not a “waste.” See Pneumo Abex Corp. v. High Point, T & D R.R., 142 F.3d 769, 775 (4th Cir. 1998) (collecting cases holding that “valuable materials” are not wastes under CERCLA based on the value and usefulness of the materials). Additionally, a past owner or operator of a facility cannot be liable absent proof its ownership or operation coincided with the disposal at issue. Spectrum Int’l Holdings, Inc. v. Universal Coops., Inc., Civil No. 04-99 (MJD/AJB), 2006 U.S. Dist. LEXIS 49716, at \*18 (D. Minn. Jul. 17, 2006) (“to be deemed a PRP pursuant to § 107(a)(2), [a party] must demonstrate that there was a disposal of hazardous substances during the time of . . . alleged operations, not a release.”).

CERCLA defines a disposal as “the discharge, deposit, injection, dumping, spillage, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any water, including ground waters.” 42 U.S.C. § 9601(29) (incorporating 42 U.S.C. § 6903(3)). Multiple courts of appeal, as well as two district courts in the Eighth Circuit, have found that disposal requires “affirmative human action.” United States v. CDMG Realty Co., 96 F.3d 706, 714 (3d Cir. 1996). Mere “passive migration” of contaminants through the soil during a term of ownership “is not disposal.” Spectrum Int’l Holdings, 2006 U.S. Dist. LEXIS 49716 at \*19 (citing Niagara Mohawk Power Corp. v. Jones Chem. Inc., 315 F.3d 171, 178 (2nd Cir. 2003), for the proposition that “disposal is set in motion by human agency, but there is none in the passive flow of contaminated run-



off”); *see also Carson Harbor Vill., Ltd v. Unocal Corp.*, 270 F.3d 863, 887 (9th Cir. 2001); *United States v. 150 Acres of Land*, 204 F.3d 698, 706 (6th Cir. 2000) (rejecting liability for subsequent operator of facility who took no active part in disposal of contaminants); *K.C. 1986 Ltd. Pshp. v. Reade Mfg.*, 33 F. Supp. 2d 1143, 1149 (W.D. Mo. 1998) (defining “passive migration” as “natural process whereby elements, including contaminants, move and spread over time as a result of a variety of forces unaided by human action. . .” and requiring affirmative human conduct for operator liability). Thus, while the initial discarding of hazardous substances as a waste constitutes a disposal, passive migration during a later term of ownership or operation does not. *Id.*

Union Pacific neither owned nor operated the rail lines in St. Francois and Madison Counties at the time that Asarco argues mining “waste” was “disposed” through the construction of rail lines. Union Pacific does not concede that mine waste was used as ballast in the construction of rail lines in St. Francois and Madison counties. But even if mine waste was used and this Court determined that such use constituted “disposal” rather than proper use of construction material, Asarco cannot meet the prima facie burden because Union Pacific neither owned nor operated the rail lines in St. Francois and Madison counties at the time Asarco claims the rail lines were constructed with mine waste. Union Pacific did not direct the construction of the relevant railroad lines, as it was not active in the area when the lines were built.<sup>25</sup> That was the responsibility of other companies, including the Federal Lead Company, Asarco’s predecessor, and other mining companies who built MRBT and other private, industrial rail lines throughout the region. *See Ex. 2*, Hawkins Decl. ¶8. Passive migration of the materials during

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<sup>25</sup> *See Ex. 18*, 1997 Articles of Merger of Missouri Pacific Railroad Company With and Into Union Pacific Railroad Company (Delaware corporation with and into Utah corporation), filed with State of Utah Dept. of Commerce Div. of Corp. and Comm. Cod on Dec. 27, 1996, reference CO#002083, p.2 ¶6 (Union Pacific did not assume ownership of the Active Lines until 1997).

subsequent ownership periods by Union Pacific or an alleged predecessor is not a “disposal” for the purposes of owner/operator liability. Therefore, Asarco’s prima facie showing on this element fails.

b) *Union Pacific is not a successor where assets were purchased from historic railroads by intervening railroads*

Asarco’s bare assertions that Union Pacific is a successor to virtually every railroad company that operated in Southeastern Missouri do not meet the prima facie burden. Nothing in CERCLA purports to rewrite well-settled common law rules with respect to successor liability or parent-subsidary relationships, *Bestfoods*, 524 U.S. at 61-62. Specifically, an asset purchaser is not liable as a corporate successor of the selling entity with only limited exceptions not relevant here. *United States v. Mexico Feed & Seed Co.*, 980 F.2d 478, 487 (8th Cir. 1992).<sup>26</sup> Even where two railroads are substantially owned by the same persons and operated in the same interest, the formal, legal separation of entities will shield affiliated companies from the liabilities of others. *Pullman’s Palace Car Co. v. Missouri P. R. Co.*, 115 U.S. 587, 596–97 (1885).

Union Pacific is not a successor entity to the entities that constructed the rail lines and thereby allegedly deposited “waste.” The ROW in St. Francois and Madison Counties at issue for purposes of past owner/operator analysis includes: the Belmont Branch; the Ste. Genevieve Line; the DeSoto Subdivision; and MRBT historic lines. St. Louis, Iron Mountain, and Southern Railway Co. (“SLIMS”) and Illinois Southern Railway (“ILS”) constructed the Belmont Branch, Ste. Genevieve Line and DeSoto Subdivision.<sup>27</sup> SLIMS and ILS dissolved subsequent to the

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<sup>26</sup> The exceptions to asset purchasers not being legal successors exist to address the situation where a transaction is entered for the purpose of fraudulently escaping liability (such as the transactions surrounding AMC’s acquisition of the SPCC stock). There is no evidence that the historic dissolutions and asset sales of SEMO-area ROW were entered for any improper purpose.

<sup>27</sup> It also appears that another historic railroad—Southern Missouri Railway Company—built some lines in St. Francois County that ILS later purchased, see *Lawson v. Illinois S. R.R. Co.*, 116 Mo. App. 690 (Mo. Ct. App.

construction of their respective lines and their railroad assets were acquired by other entities.<sup>28</sup>

SLIMS and ILS are therefore not Union Pacific predecessor entities.

Aside from SEMO-area industrial rail lines, MRBT ROW ran closest to the Sites. Portions of rail lines were constructed and operated by Doe Run Lead Company and other portions by St. Joseph Lead Company and its wholly owned company MRBT for over forty years.<sup>29</sup> The Missouri Illinois Railroad (“MI”) acquired limited remaining assets when MRBT dissolved in 1945.<sup>30</sup> Thus, MRBT is also not a Union Pacific predecessor entity.<sup>31</sup> Any interest that Union Pacific or its alleged predecessors had or have in former MRBT ROW is the result of a limited asset purchase in 1945.<sup>32</sup> The Active Lines that were originally MRBT lines are the Bonne Terre segment and the Monsanto segment, and as discussed above are not relevant to Asarco’s prima facie showing, in any case. § IV.C.2, *supra*.

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1906)(holding that ILS was not responsible due to purchase of railroad assets for prior tort of selling railroad entity that had dissolved but previously operated in St. Francois County).

<sup>28</sup> See Ex. 2D *In re Application of the Missouri-Illinois R.R. Co. for a Certificate of Public Convenience and Necessity*, 67 I.C.C. 283, 283 (Fin. Dkt. 1235) (Mar. 14, 1921) (“Purchase of ILS Track Approval”) (noting that the ILS that constructed the Ste. Genevieve Line went bankrupt in 1920 and approving of Missouri Illinois Railroad’s later purchase of the rail assets); Ex. 2A, Excerpt of Articles of Ass’n of Missouri Pacific Railroad Company, p.2 (describing formation for the purpose of purchasing lines of The Missouri Pacific Railway Company and the lines of, or formerly of, SLIMS).

<sup>29</sup> See Ex. 19, Excerpts of *In re Missouri Pacific R.R. Corp.*, Pet. of Trustee for Dismissal of Reorganization Proceedings as to Missouri-Illinois R.R. Co., Debtor, and Trustee’s Report of His Administration of Said Debtor’s Estate (Petition No. 2499), Case No. 6935 (E.D. Mo. Apr. 15, 1944), pp. 19881-883 (“Petition for Dismissal of MI Reorganization”) (noting at p.19882 that St. Joseph Lead Company constructed portions of the line sold to MRBT and at p. 19883 that Doe Run Lead Company constructed other portions sold to MRBT; also noting historic presence of St. Joseph & Desloge Railway and other historic railroad called Iron Mountain Railroad); Ex. 2, Hawkins Decl. ¶6C.

<sup>30</sup> Ex. 20, MRBT Certificate of Dissolution, Missouri Secretary of State, Certificate No. R.R. 354 (Sept.25, 1945); and Ex. 21, MRBT Articles of Dissolution filed Sept. 17, 1945.

<sup>31</sup> The Court documents and other sources Union Pacific relies upon for railroad ROW ownership matters are all publically available documents. Asarco complains frequently that it was not permitted discovery on abandonment or historic ownership issues, e.g., Br. at 16 n.11. This argument is without merit, as the documents were all equally available to Asarco as they were to Union Pacific. For example, Asarco made no records request to the ICC. Union Pacific produced nearly 3,000 pages of records to Asarco, including copies of relevant documents it obtained from publically available sources. Union Pacific should not suffer for Asarco’s lack of investigation or title research by permitting Asarco more time to attempt to understand basic ROW ownership issues or establish its prima facie case.

<sup>32</sup> See Ex. 2G, Report, *Purchase by the Missouri-Illinois R.R. Co. of the Properties, Rights, and Franchises of the Mississippi River & Bonne Terre Rwy.*, approved and authorized, I.C.C. Fin. Dkt. 14897, pp.1-2, 3 (June 7, 1945)(“ICC MRBT Asset Sale Approval”)(describing MRBT as owing two segments and approving MI’s purchase of these assets).

4. The Rail Lines Servicing the Mine Areas in St. Francois County Were Privately Held Industrial Lines, and to the Degree there Is Liability For Such Lines the Liability Rests With Asarco and Industrial Private Operators

Although Asarco well knows that SEMO area mining facilities were serviced by industrial rail lines (lines that were privately owned by the mining companies) or underground tramways, Asarco fails to mention these facts.<sup>33</sup> Asarco incorrectly states that “nearly all” rail lines in both Madison and St. Francois counties were owned by Union Pacific or its alleged predecessor(s), Br. at 14. However, numerous industrial rail lines in St. Francois and Madison counties are documented in publically available materials, including in material attached to Asarco’s Brief.<sup>34</sup>

Furthermore, the Federal Lead Company—Asarco’s predecessor for which Asarco settled SEMO Sites liability—was the owner and operator of the rail company, Lead Belt Railway, and the line serving the Federal Mines site.<sup>35</sup> Several of the sample locations Asarco relies upon were taken from former industrial, private track that were owned and operated by mining companies. *See* § IV.D, *infra*. Liability for the most heavily contaminated historic ROW, assuming *arguendo* the presence of contaminants on ROW and a release at any measurable level, rests with the mining companies themselves.

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<sup>33</sup> Asarco does make a single reference to the Lead Belt Railway, Br. at 10, but does not mention that it was owned and operated by Asarco’s predecessor Federal Lead Company.

<sup>34</sup> *See* Ex. U to Br., pp.716 and 752 (listing the Lead Belt Railway, St. Louis Smelting and Refining Co. railway, Pittsburgh Plate Glass Co. railway, Desloge Consolidated Lead Company Railway, and the Lead Belt Railway at Rivermines as private, industrial lines connecting with the main lines Asarco has alleged to be Union Pacific predecessor lines); and Ex. K to Br. (“NF Draft Report”), p.3 (referencing the St. Joe and Desloge Railroad). *See also* Ex. 19, Petition for Dismissal of MI Reorganization, p. 19882; Ex. 2K, Excerpt from 1884 Poor’s Manual of Railroads, p.814 (listing 18 mile private railroad St. Joseph and Desloge Railway from Bonne Terre to Summit, Missouri); Ex. 2L, Excerpt from 1911 Poor’s Manual of Railroads, p. 2683 (describing Lead Belt Ry. Co. as owning 12.31 miles of railroad inclusive of yard tracks and siding); and *see* Bonnarens v. Lead Belt R. Co., 309 Mo. 65 (1925) (describing industrial rail operations by Asarco predecessor Federal Lead Company). *See also* Ex. 5., OU5 ROD at p.8 (describing the Catherine Tramway in Madison County) and Ex. 19, Petition for Dismissal of MI Reorganization, p.19890 (describing the underground tramway opened circa-1933 in St. Francois County to transport mining concentrates underground). Asarco’s expert also identified multiple locations not operated by Union Pacific or alleged predecessors. Ex. 13, Rosasco 92:14-100:1.

<sup>35</sup> Ex. 12, Pfahl 44:22-45:7; Bonnarens, 309 Mo. at 65, 68.

**D. ASARCO Has Presented No Evidence of Hazardous Substance Releases by Union Pacific or on Union Pacific ROW**

Asarco has presented no evidence of a release or threat of release of hazardous substances on Union Pacific ROW. Under CERCLA, a release is “any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant) . . . .” 42 U.S.C. § 9601(22). Courts generally find the release element satisfied by evidence of the presence of hazardous substances at the relevant facility. *See, e.g., Yellow Freight Sys. v. ACF Indus.*, 909 F.Supp. 1290, 1297 (E.D. Mo. 1995); *Bliss*, 1991 U.S. Dist. LEXIS at \*1297 (the presence hazardous substances at the site constitutes a release). A threatened release may be demonstrated by the presence of unsecured hazardous substances with the potential to spill, leak, escape, leach or be carried into the environment. *See id.*

Asarco bases its assertion that it has satisfied this element on the ROW ballast sampling purportedly conducted by Asarco in November 2013 (the “Asarco Sampling”), and the ballast sampling conducted by NewFields in St. Francois County (the “NewFields Sampling”) in November 2006. However, neither the Asarco nor NewFields Sampling demonstrates the presence of hazardous substances on Union Pacific ROW at or near the Asarco Settlement Sites in St. Francois or Madison counties.<sup>36</sup>

**1. The Court Should Disregard the Asarco Sampling**

Asarco purports to have identified hazardous substances on ROW in St. Francois and Madison counties through the Asarco Sampling and subsequent chemical analysis. However, the

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<sup>36</sup> Even if the Asarco and NewFields samplings were valid and relevant, Asarco has not demonstrated that the ROW ballast would constitute a measureable release. Ex. 3, Hansen Decl. ¶¶12-16; *see also Ex. 3A*, Hansen Report pp. 6-7. Asarco’s speculation about a release does not satisfy Asarco’s burden.

Asarco Sampling results and the reports containing the chemical analysis (the “Teklab Reports”) must be disregarded as unreliable. The results of the sampling cannot be reproduced or verified and the Teklab Reports contain so little information as to make them unreliable and unusable for any evidentiary purpose.<sup>37</sup>

An expert’s “statements constituting scientific explanation must be capable of empirical test.” Daubert v. Merrill Dow Pharm., Inc., 509 U.S. 579, 592-93 (1993). Thus, an expert’s methods must be explained “in rigorous detail” so that an opposing party may reproduce any testing conducted. Elok v. Kmart Corp., 233 F.3d 734, 747 (3d Cir. 2000).

Here, however, Asarco has provided none of the information necessary to test and verify the results of the Asarco Sampling. Asarco has purposefully hidden the precise locations the samples were taken. Although Asarco produced maps showing the general location of each sample, the maps do not provide sufficient detail or geo-location coordinates (unlike the NewFields Samples) to reproduce the sampling. Asarco’s own expert, Paul Rosasco, admitted at deposition that he did not collect the samples, does not know where the samples were collected and was unable to locate or examine the sample locations with the information provided to him. Ex. 13, Rosasco 69:16–69:19. Similarly, Asarco has provided no information regarding who collected the samples or how they were collected. Mr. Rosasco does not have this information and was only able to guess as to two possible collection methods in his deposition. *Id.* 176:6–176:16.

The Teklab reports are similarly devoid of information regarding the Asarco Sampling. Ex. Q to Br., Teklab Reports. They contain no information regarding the sample locations and all information regarding the party who collected the samples and contracted with Teklab for the

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<sup>37</sup> See Union Pacific’s Motion to Exclude Expert Opinions and Testimony (Jul. 16, 2014) for a more detailed discussion of the inadequacies in Mr. Rosasco’s Report, the Asarco Sampling, and the Teklab Reports.

chemical analysis has been redacted. *Id.* Asarco's corporate witness admitted that he could not determine from the lab reports where the samples were taken or even whether they were taken within railroad ROW. Ex. 12, Pfahl 105:18–105:22, 106:16–106:23. Asarco's counsel has denied that the samples were taken in Union Pacific ROW. Ex. 22, Asarco Letter (denying any trespass on Union Pacific property).

Without basic information regarding the Asarco Sampling, it is impossible to verify or replicate Asarco's purported results. The Asarco Sampling and Teklab reports are unreliable and cannot serve as evidence of a release or threat of release on Union Pacific ROW.

2. The NewFields Samples Do Not Reflect Conditions at Union Pacific ROW Within or Near the Asarco Settlement Sites

The NewFields Samples were taken eight years ago either: (1) on ROW that is not in close proximity to or within any of the Asarco Settlement Sites; (2) on ROW that was never owned or operated by Union Pacific or any corporate predecessor; or (3) on ROW near sites where Asarco settled no liability and expended no response costs. As such the NewFields Samples cannot support Asarco's prima facie showing that there was a release or threat of release on Union Pacific ROW.

a) *The NewFields Samples*

In 2006, pursuant to an Administrative Order on Consent between Doe Run and EPA, NewFields conducted an assessment and produced a draft report of the nature and extent of mine-related materials associated with historic railroad beds in St. Francois County. Ex. K to Br., NF Draft Report, p.1. NewFields took samples of railroad ballast material at 13 locations throughout the county. *Id.* at 5. NewFields took no samples and conducted no assessment of locations in Madison County. *Id.* at 1. NewFields reported these data and analysis in draft report form only. Asarco witnesses have no information about whether a final report was ever

produced. Ex. 13, Rosasco 195:23-196:5; Ex. 12, Pfhal 97:19-98:2. For purposes of this Response, Union Pacific assumes *arguendo* that a draft report has some evidentiary value. The NF Draft Report does not mention Union Pacific. Ex. 12, Pfahl 97:18-98:14. The sample locations are listed in Table 1, below, and depicted on the map attached as Ex. 3C, NewFields Sample Locations Map.

**Table 1. Newfields Sample Locations<sup>38</sup>**

SAMPLE NO.	SAMPLE LOCATION
HRR-01	Mitchell/Gumbo Branch, near Mitchell
HRR-02	Industrial Spur at Owl Creek Crossing
HRR-03	Industrial Spur Near Trailwood St., Desloge
HRR-04	Hoffman Branch, near Monsanto
HRR-05	Hoffman Branch, near Hunt Ford
HRR-06	Industrial Spur, near National Tailings Pile
HRR-08	MRBT Mainline, between Derby Junction and Doe Run Junction-abandoned 1941
HRR-09	Belmont Branch near Doe Run Juntion
HRR-10	Hoffman Branch, between Hunt Ford and Leadwood
HRR-11	Mitchell/Gumbo Branch, near Mitchell Junction
HRR-12	Mitchell/Gumbo Branch, between the MRBT Mainline at Elvins and Stone Quarry
HRR-13	Industrial Spur, near Federal Tailings Pile
HRR-14	Former MRBT Mainline, North of Bonne Terre

b) *The NewFields Samples were taken along ROW that is not within or near the Asarco Settlement Sites and are not evidence of a Union Pacific release*

The majority of the NewFields Samples do not answer the question about releases at the Asarco Settlement Sites, as they were taken too far away from the eight major mine waste piles to be of any relevance. See Ex. 23, Halo Removal Order, Attachment 1, p. 1. Table 2, below lists the samples and their proximity to the nearest tailings pile.

<sup>38</sup> Note that the draft NewFields report does not report data for HRR-07 so there are only thirteen sample locations. See Ex. K to Br., NF Draft Report, p.8 (Table 2), p.9 (Table 3).



**Table 2. Proximity of Newfields Sample Locations to Tailings Piles**

SAMPLE NO.	NEAREST PILE	DISTANCE	IS THE NEAREST PILE AN ASARCO SETTLEMENT SITE?
HRR-01	Leadwood Tailings	1.11 miles	<b>No</b>
HRR-02	Desloge/Big River Tailings	0.65 miles	<i>Yes</i>
HRR-03	Desloge/Big River Tailings	0.25 miles	<i>Yes</i>
HRR-04	Desloge/Big River Tailings	1.19 miles	<i>Yes</i>
HRR-05	Desloge/Big River Tailings	1.49 miles	<i>Yes</i>
HRR-06	National Tailings	0 miles	<b>No</b>
HRR-08	Federal Tailings	1.01 miles	<i>Yes</i>
HRR-09	Doe Run	2.07 miles	<b>No</b>
HRR-10	Leadwood Tailings	0.73 miles	<b>No</b>
HRR-11	Elvins Tailings	1.1 miles	<b>No</b>
HRR-12	Elvins Tailings	0.24 miles	<b>No</b>
HRR-13	Federal Tailings	0.45 miles	<i>Yes</i>
HRR-14	Bonne Terre Tailings	0.07 miles	<b>No</b>

Ex. 3, Hansen Decl. ¶8; *see also* Ex. 3D, Proximity of NewFields Samples to Tailings Piles Map.

Eleven of the thirteen NewFields Samples are more than a quarter mile from any mine waste pile and provide no evidence of a release proximate to any mine waste area in St. Francois County. No sample is closer than 0.25 miles to the Big River or Federal Tailings Pile locations (HRR 2-5, 8, 13). Three of the six samples where the Big River or Federal Tailings is the closest waste pile are more than one mile away from the site (HRR 4, 5, 8). These data do not support finding a release that Asarco has expended funds to address.

By contrast, the 2004 Administrative Order on Consent for Removal Action for the St. Francois County Sites (the “Halo Removal Order”) only required soil removal in residential yards and child high-use areas within a 0.09 mile area of concern (500 feet, less than a tenth of a mile) around the tailings piles. Ex. 23, Halo Removal Order, Attachment 1, p. 1. All but two of the NewFields Samples fall outside the removal “halo” required by the order, and the two within

the halo—HRR06 and 14, near the National Tailings and Bonne Terre Tailings, respectively—do not pertain to the Asarco Settlement Sites. Because the NewFields Samples do not demonstrate a release at, or in close proximity to the area that has been the focus of remediation and are not sufficiently near the Asarco Settlement Sites, these data are not relevant to Asarco's prima facie showing.

Additionally, there is no basis to argue that Union Pacific ever owned the industrial spurs leading to the mines or abandoned MRBT ROW (HRR 2,3,6,13 appear to be taken from such locations). Asarco is not even claiming that the industrial spurs were owned or operated by Union Pacific or its alleged predecessors, and they were not. *See* n.34, *supra*. The spurs where samples HRR-2, 3 and 13 were taken do not even appear on the map prepared by Asarco's expert and proffered to demonstrate the location of ROW purportedly owned by Union Pacific or alleged predecessors. Ex. F2 to Br. Mr. Rosasco testified at deposition that he was aware of no other lines (other than those shown on Ex. F2) within St. Francois or Madison counties that are either Union Pacific or predecessor railroads. Ex. 13, Rosasco 100:20–101:22. Additionally, as MRBT is not a Union Pacific predecessor entity, any hazardous substances found in sample 8 cannot be attributed to Union Pacific and are not relevant to the question of Union Pacific liability.

Finally, the remaining NewFields Samples (HRR 1, 4, 5, 9, 10, 11, 12 and 14) cover locations that are irrelevant because Asarco settled no liability there. For example Asarco did not settle for any liability at Bonne Terre, the nearest tailings pile to sample HRR-14. *See* n.14, *supra*. Similarly, samples HRR-4, 5, and 10 are taken on the Hoffman Branch that terminates near the Leadwood Pile. Asarco did not settle liability at Leadwood. *Id.* Samples 11 and 12 are nearest to the Elvins Tailings and Asarco did not settle liability at that location. *Id.* None of

these samples are germane to Asarco's claim for contribution, as Asarco had no liability at these locations and never paid to resolve liability there.

## **V. CONCLUSION**

Based upon the foregoing, Union Pacific respectfully requests that Court find:

1. Asarco has failed to present any evidence of Union Pacific liability for three of the Asarco Settlement Sites, including the West Fork, Sweetwater, and Glover sites, and therefore Asarco has failed to meet its prima facie burden as to these sites and all claims against Union Pacific for these sites are dismissed with prejudice.
2. Asarco has failed to establish by a preponderance of the evidence Union Pacific liability for the Asarco Settlement Sites in Madison County, Missouri, and therefore Asarco has failed to meet its prima facie burden as to these sites and all claims against Union Pacific for these sites are dismissed with prejudice.
3. Asarco has failed to establish by a preponderance of the evidence Union Pacific liability for the Asarco Settlement Sites in St. Francois County, Missouri, and therefore Asarco has failed to meet its prima facie burden as to these sites and all claims against Union Pacific for these sites are dismissed with prejudice.

Respectfully submitted,

**BUCKLEY & BUCKLEY, L.L.C.**

By: /s Ann E. Buckley  
Stephen M. Buckley #32919MO  
Ann E. Buckley #26970MO  
1139 Olive Street, Suite 800  
St. Louis, Missouri 63101-1928

**SQUIRE PATTON BOGGS (US) LLP**

By: /s Carolyn L. McIntosh  
Carolyn L. McIntosh, admitted *pro hac vice*  
Maxine S.A. Martin, admitted *pro hac vice*  
1801 California Street, Suite 4900  
Denver, Colorado 80202

Telephone: (314) 621-3434  
Facsimile: (314) 621-3485  
SBuckley@buckleylawllc.com  
ABuckley@buckleylawllc.com

Telephone: (303) 894-6127  
Facsimile: (303) 894-9239  
Carolyn.McIntosh@squirepb.com  
Maxine.Martin@squirepb.com

And

**CONNELLY●BAKER●WOTRING L.L.P.**

By: /s/ Michael Connelly

Michael Connelly, admitted pro hac vice  
Texas State Bar No. 04685000  
700 JPMorgan Chase Tower  
600 Travis  
Houston, Texas 77002  
Telephone: (713) 980-1700  
Facsimile: (713) 980-1702  
mconnelly@connellybaker.com

**ATTORNEYS FOR DEFENDANT UNION  
PACIFIC RAILROAD COMPANY**

*Original signatures on file*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 16th day of July, 2014, a copy of the above and foregoing was filed electronically with the Clerk of the Court, using CM/ECF system, which sent notification of such filing to:

Gregory L. Evans  
James G. Warren  
Laura Brys  
INTEGER LAW CORPORATION  
633 W. Fifth Street, 67<sup>th</sup> Floor  
Los Angeles, CA 90071  
gevans@integerlegal.com  
jwarren@integerlegal.com  
lbrys@integerlegal.com  
Attorneys for Plaintiff

Joel L. Herz  
LAW OFFICES OF JOEL L. HERZ  
3573 E. Sunrise Drive, Suite 215  
Tucson, AZ 85718  
joel@joelherz.com  
Attorneys for Defendant NL Industries,  
Inc.

Robert S. Reid  
SCHNAPP, FALL, SILVEY & REID, LLP  
P. O. Box 151  
Fredericktown, MO 63645-0151  
sreid@bigrivertel.net  
Attorneys for Defendant for St. Francois  
County Environmental Corporation

W. James Foland  
Michael L. Belancio  
Foland, Wickens, Eisfelder,  
ROPER & HOFER, PC  
911 Main Street, 30<sup>th</sup> Floor  
Kansas City, MO 64105  
jfoland@fwpclaw.com  
mbelancio@fwpclaw.com  
Attorneys for Plaintiff

William C. Blanton, Jr.  
HUSCH BLACKWELL, LLP  
4801 Main Street, Suite 1000  
Kansas City, MO 64112  
wc.blanton@huschblackwell.com  
Attorneys for Defendant NL  
Industries, Inc.

John F. Cowling  
ARMSTRONG TEASDALE, LLP  
7700 Forsyth Boulevard, Suite 1800  
St. Louis, MO 63105  
jcowling@armstrongteasdale.com  
Attorneys for Defendant Anschutz  
Mining Corporation

By: /s/ Carolyn L. McIntosh  
Carolyn L. McIntosh

# EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

ASARCO LLC,

Plaintiff,

NL INDUSTRIES, INC., et al.,

Defendants.

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Case No. 4:11-cv-00864 JAR

**DECLARATION OF CAROLYN L. MCINTOSH IN SUPPORT OF UNION PACIFIC'S  
RESPONSE TO ASARCO LLC'S *LONE PINE* BRIEF**

I, Carolyn L. McIntosh, pursuant to the provisions of 28 U.S.C. § 1746 certify as follows:

1. My name is Carolyn L. McIntosh. I am over 21 years of age. I am an attorney at Squire Patton Boggs (US) LLP. I am familiar with the above-captioned action, and the documents set forth below, as a result of my role as counsel for Union Pacific Railroad Company ("Union Pacific"). Based on my review of these documents in preparing this declaration, I have personal knowledge of the facts stated herein.

2. I submit this declaration in support of Union Pacific's Response to Asarco LLC's *Lone Pine* Brief.

3. Attached as Exhibit 2 is a true and correct copy of the Declaration of John Hawkins in support of Union Pacific's Response to Asarco LLC's *Lone Pine* Brief, filed in the present action. Also included with Mr. Hawkins' Declaration are true and correct copies of twelve documents that he refers to in his Declaration:

4. Attached as Exhibit 3 is a true and correct copy of the Declaration of Brian Hansen in support of Union Pacific's Response to Asarco LLC's *Lone Pine* Brief, filed in this

action. Also included with Mr. Hansen's Declaration are true and correct copies of four documents that he refers to in his Declaration.

5. Attached as Exhibit 4 is a set of excerpts taken from a true and correct copy of the transcript of the May 12, 2008 Motion Hearing, in the Asarco Bankruptcy, Case No. 05-021207 (S.D. Tex.) (the "Bankruptcy").

6. Attached as Exhibit 5 is an excerpt taken from a true and correct copy of the Record of Decision for the Catherine Mines and Skaggs Tailings Subsites, Operable Unit 05, dated September, 2012.

7. Attached as Exhibit 6 is an excerpt taken from a true and correct copy of the Proffer of Jeffery Zelikson in Support of Debtor's Settlement Agreement Regarding the Southeast Missouri (SEMO) Sites, filed in the Bankruptcy (Bankr. Doc. 7636).

8. Attached as Exhibit 7 is a true and correct copy of the United States Proof of Claim No. 10746, filed in the Bankruptcy.

9. Attached as Exhibit 8 is a true and correct copy of the Missouri Department of Natural Resources Proof of Claim No. 11116, filed in the Bankruptcy.

10. Attached as Exhibit 9 is an excerpt taken from a true and correct copy of the Draft Focused Remedial Investigation for Mined Areas in St. Francois County, Missouri, dated March 1, 2002.

11. Attached as Exhibit 10 is a true and correct copy of the NPL Site Narrative for the Big River Mine Tailings/St. Joe Minerals Corp.

12. Attached as Exhibit 11 is an excerpt taken from a true and correct copy of the EPA Report "Noticed Parties at CERCLIS Sites," run on October 28, 2013.



13. Attached as Exhibit 12 is a set of excerpts taken from a true and correct copy of the transcript of the Rule 30(b)(6) Deposition of Asarco, represented by John Christopher Pfahl, taken March 19, 2014 in the present action.

14. Attached as Exhibit 13 is a set of excerpts taken from a true and correct copy of the transcript of the deposition of Paul Rosasco, taken February 27, 2014 in the present action

15. Attached as Exhibit 14 is a set of excerpts taken from a true and correct copy of the transcript of the deposition Donald Robbins, taken April 18, 2014 in the present action.

16. Attached as Exhibit 15 is a set of excerpts taken from a true and correct copy of the transcript of the deposition of Robert Grimaila, taken on November 7, 2103 in the present action.

17. Attached as Exhibit 16 is a set of excerpts taken from a true and correct copy of the transcript of the Deposition of John Hawkins taken March 6, 2014 in the present action.

18. Attached as Exhibit 17 is an excerpt taken from a true and correct copy of Poor's Manual of Railroads, published in 1890.

19. Attached as Exhibit 18 is an excerpt taken from a true and correct copy of the Articles of Merger of Missouri Pacific Railroad Company With and Into Union Pacific Railroad Company, dated November 21, 1996.

20. Attached as Exhibit 19 is an excerpt taken from a true and correct copy of the Petition for Dismissal of Reorganization Proceedings as to Missouri-Illinois Railroad Company, No. 6935 (E.D. Mo. 1944).

21. Attached as Exhibit 20 is a true and correct copy of the Certificate of Dissolution of the Mississippi River and Bonne Terre Railway, dated September 25, 1945.

--- Attached as Exhibit 21 is a true and correct copy of the Articles of Dissolution and Articles of Liquidation of the Mississippi River and Bonne Terre Railway, filed September 17, 1945.

23. Attached as Exhibit 22 is a true and correct copy of a letter from Greg Evans to John Barg, dated June 20, 2013.

24. Attached as Exhibit 23 is a true and correct copy of the March 29, 2004 Administrative Order on Consent for Removal Action between The Doe Run Resources Corp. and EPA (the "Halo Removal Order").

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 16, 2014.



Carolyn L. McIntosh

Attorney

# EXHIBIT 2

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI**

ASARCO LLC,

Plaintiff,

NL INDUSTRIES, INC., et al.,

Defendants.

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Case No. 4:11-cv-00864 JAR

**DECLARATION OF JOHN HAWKINS IN SUPPORT OF UNION PACIFIC'S  
RESPONSE TO ASARCO'S LONE PINE BRIEF**

I, John Hawkins, pursuant to the provisions of 28 U.S.C. § 1746 certify as follows:

1. My name is John Hawkins. I am over 21 years of age. I am of sound mind and capable of making this declaration. I have personal knowledge of the facts recited in this declaration based on publicly available records and the corporate records of Union Pacific Railroad Company ("Union Pacific"). I submit this declaration in support of Union Pacific's Response to Asarco LLC's ("Asarco") Lone Pine Brief.
2. I have worked for Union Pacific since 1984 and am presently the Director of Real Estate Operations. My responsibilities include electronic data management, property engineering and appraisal services, and system/process consultation. I have 25 years of experience in the Real Estate Department in various capacities. One of my responsibilities is evaluating available records (both publicly available and internal Union Pacific records) to determine whether Union Pacific owns or has ever owned particular parcels. I have conducted multiple ownership studies of this type, researching property records on behalf of Union Pacific.

3. I was deposed in this action, as Union Pacific's corporate designee, on March 6, 2014, regarding chain of title of right-of-way ("ROW") and related property currently or formerly owned by Union Pacific or other historic railroads in relation to certain areas in St. Francois, Iron, Madison, and Reynolds Counties that I understand are the subject of the lawsuit between Asarco and Union Pacific. These areas are: (1) The Big River Mine Tailings/St. Joe Minerals Corp. Site, located in St. Francois County, Missouri; (2) the Federal Mine Tailings Site, also located in St. Francois County, Missouri; (3) the Madison County Mines Site, encompassing the Catherine Mine site, in Madison County, Missouri; (4) the West Fork Mine/Mill Property, in Reynolds County, Missouri; (5) the Sweetwater Mine and Mill Property, in Reynolds County, Missouri; and (6) the Glover Smelter Property, in Iron County, Missouri. In this Declaration, I refer to these areas collectively as the "SEMO Sites".

4. For purposes of this Declaration, I reviewed Union Pacific valuation maps, topographical maps depicting mine tailings pile locations, deeds, and industry publications, including Interstate Commerce Commission ("ICC") filings, and numerous years of Poor's and Moody's annual reports. I also consulted with Union Pacific's Tax and Marketing Departments. It is my understanding that the records I consulted and relied upon have been produced in this case.

5. Based upon my review, the majority of SEMO area ROW grants in St. Francois and Madison counties were easements and did not convey fee ownership of ROW.

6. Union Pacific currently operates four active rail segments in St. Francois County: (1) the Desoto Subdivision on the western border of St. Francois County (2) the St. Genevieve Line between Bismarck, St. Francois County eastward toward Ste. Genevieve, Ste. Genevieve County, (3) the Bonne Terre segment of the Mississippi River & Bonne Terre Railway ("MRBT") mainline that runs from south of the City of Bonne Terre to Derby Junction, and (4)

the Monsanto segment, which runs from the Bonne Terre segment at Hoffman Junction westerly toward Monsanto, Missouri.

- A. The DeSoto Subdivision was constructed by the St. Louis & Iron Mountain Railroad in the 1850's. The railroad went bankrupt in the late 1880s. Missouri Pacific Railroad was formed in 1917 to acquire the former railroad's rail assets. It then was named the St. Louis, Iron Mountain and Southern Railway Company ("SLIMS"). I have attached to my Declaration excerpts from a true and correct copy of the 1917 Articles of Association of Missouri Pacific Railroad.<sup>1</sup> The DeSoto Subdivision is more than five miles away from any SEMO Sites in St. Francois County and does not even enter Madison County.
- B. The Ste. Genevieve line was constructed by the Southern Missouri Railway in the early 1900's. It was acquired by the Illinois Southern Railway ("ILS") *circa* 1903. The operations of the ILS were suspended in 1919. The Missouri Illinois Railroad Company ("MI") was created in 1921 to acquire the remaining ILS railroad assets at foreclosure sale. In support of these statements, have attached to my Declaration true and correct copies of excerpts from Poor's Manual documents, ICC records, and an ILS foreclosure sale deed.<sup>2</sup> The Ste. Genevieve ROW did not historically and does not currently enter any SEMO Sites.
- C. Deeds and other public records document that the ROW of much of the MRBT in St. Francois County was conveyed to the MRBT from the St. Joseph and Doe Run Lead Companies subsequent to the construction of the track. I have attached to my Declaration true and correct copies of some examples of deeds conveying property from the lead

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<sup>1</sup> Ex. 2A, 1917 Articles of Association of the Missouri Pacific Railroad (UPRR 1535-1536 and 1550-1551).

<sup>2</sup> Ex. 2B, 1905 Poor's Manual of Railroads (UPRR 2028-2029); Ex. 2C, 1920 Poor's Manual of Railroads (UPRR 2042-2043); Ex. 2D, *In re Application of the Missouri-Illinois R.R. Co. for a Certificate of Public Convenience and Necessity*, 67 I.C.C. 283 (Fin. Dkt. 1235) (Mar. 14, 1921) (UPRR 1714-1716); Ex. 2E, Decree of Foreclosure & Sale of ILS Assets (UPRR 1717-1739).

companies in St. Francois County to MRBT.<sup>3</sup> Specifically, the November 19, 1893 Lease from St. Joseph Lead Company to MRBT and the December 11, 1893 Quitclaim Deed from St. Joseph Lead Company to MRBT show that St. Joseph Lead Company built the rail line from Riverside, Missouri to Doe Run Missouri, rented it to MRBT, then granted MRBT an easement to that line.

- D. The MRBT was dissolved and remaining assets, consisting only of the main branch from Derby to Riverside and the Hoffman Branch from Bonne Terre to Hoffman, were acquired by the Missouri Illinois Railroad Company in 1945. I have attached to my Declaration a true and correct copy of the ICC record approving that acquisition.<sup>4</sup>
- E. The Belmont Branch was constructed by the St. Louis & Iron Mountain Railroad in the 1860's. As I have stated in paragraph 6.A. the railroad went bankrupt in the late 1880s. The Belmont Branch was one of the assets later acquired by the newly formed Missouri Pacific Railroad. At its closest point, this line passed over a mile away from the Catherine Mine site in Madison County. Neither Union Pacific nor any of its corporate predecessors owned property serving this mine. The line was abandoned by the Missouri Pacific Railroad Company in 1972, before the Missouri Pacific Railroad Company merged with Union Pacific. I have attached to my Declaration a true and correct copy of the ICC record approving the abandonment and a copy of the Missouri Pacific Railroad Company Disclaimer, disclaiming any interest in the ROW easement.<sup>5</sup>

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<sup>3</sup> Ex. 2F, Sample of deeds conveying constructed railroad and ROW from lead companies to MRBT: (UPRR 2826-2828), UPRR 2831-2832, 1/2/1902 quit claim deed from Doe Run Lead Company to MRBT (UPRR 2858-2863), and 6/28/1906 quit claim deed also from Doe Run Lead Company to MRBT (UPRR 2890-2894).

<sup>4</sup> Ex. 2G, Report, *Purchase by the Missouri-Illinois R.R. Co. of the Properties, Rights, and Franchises of the Mississippi River & Bonne Terre Rwy., approved and authorized* (I.C.C. Fin. Dkt. 14897) (June 7, 1945) (UPRR-1504-UPRR-1507).

<sup>5</sup> Ex. 2H, Excerpt from *Missouri Pacific R.R. Co. Abandonment Between Bismarck and Whitewater, Mo.*, 342 I.C.C. 643, 645 (Fin. Dkt. 26353) (Aug. 16, 1972) (UPRR 1774-1776); Ex. 2I Belmont Branch Disclaimer dated 10/11/1977 (UPRR.2806-2812).

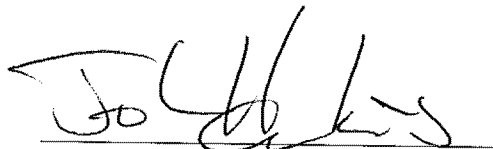
7. Union Pacific operates no active rail lines in Madison County. Union Pacific never owned or operated the Belmont Branch; Union Pacific has never owned ROW in Madison County and only owns one small (400 square feet), non-ROW property in Madison County. I have attached to my Declaration a true and correct copy of the 2013 Madison County tax receipt documenting the limited Union Pacific property in Madison County, Missouri.<sup>6</sup>

8. Private companies built industrial spurs off the historic rail lines in the region on which they operated their own railroads and conducted their own switching operations. For example, the St. Joe and Des Loge Lead Company built and owned the St. Joseph and Desloge Railway and the Federal Lead Company owned the Lead Belt Railway. I have attached to my Declaration true and correct copies of excerpts from Poor's Manual documents evidencing these private, industrial rail lines.<sup>7</sup>

9. The Union Pacific corporate records that I reviewed in connection with preparing this declaration are kept in the regular course of business, record events at or near the time at which they occur, and were made by persons with personal knowledge of the events.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 16, 2014.

  
John Hawkins  
Director of Real Estate Operations

<sup>6</sup> Ex. 2J, 2013 Madison County Tax Receipt (UPRR 2021-2022).

<sup>7</sup> Ex. 2K, 1884 Poor's Manual of Railroads (UPRR 2734-2735); Ex. 2L, 1911 Poor's Manual of Railroads (UPRR 2044-2045).



## EXHIBIT 2A

**Articles of Association**

OF

**MISSOURI PACIFIC RAILROAD COMPANY**

RR  
Filed in the Office of the Secretary of State of the  
State of Missouri, March , 1917

0001

UPRR-001535

**ARTICLES OF ASSOCIATION**  
**OF**  
**MISSOURI PACIFIC RAILROAD COMPANY**

We, whose names are hereunto subscribed, do hereby associate ourselves together for the purpose of forming a company under the laws of Missouri for the purpose of purchasing lines of railroad hereinafter described and the franchises and property appertaining thereto of, or formerly of, The Missouri Pacific Railway Company and lines of railroad hereinafter described and the franchises and property appertaining thereto of, or formerly of, St. Louis, Iron Mountain and Southern Railway Company, and of maintaining and operating said lines of railroad, and of constructing, maintaining and operating a railroad for public use in the conveyance of persons and property, and do hereby for that purpose make and sign these Articles of Association, and do hereby state :

**I.**

The name of the Company hereby formed shall be  
MISSOURI PACIFIC RAILROAD COMPANY.

**II.**

The number of years the Company is to continue is nine hundred years from the filing of these Articles in the office of the Secretary of State of the State of Missouri.

**III.**

The places from and to which the road is to be acquired, constructed, maintained and operated are as follows :

1. A line from at or near Kansas City, Missouri, to the western boundary of Missouri, and thence to a point at or near Paola, Kansas.

0002

UPRR-001536

ED\_000859\_00001362-00053

15

STATE OF MISSOURI, }  
City of St. Louis, } ss. :

John Cannon, Edward A. Chenery and John G. Drew,  
being duly sworn, each on his oath states that he is one of the  
directors named in the foregoing Articles of Association for  
the incorporation of Missouri Pacific Railroad Company, that  
at least one thousand dollars (\$1,000) of stock for every mile  
of standard gauge railroad made or proposed to be made by  
said Company (being the amount of such stock required by  
Section 3051 of the Revised Statutes of Missouri) has been  
subscribed thereto in good faith, and that five per cent. (5%)  
has been paid thereon, in good faith and in cash, to the di-  
rectors named in said Articles of Association, and that it is  
intended in good faith to maintain and operate the standard  
gauge road mentioned in said Articles of Association.

*John Cannon*  
*Edward A. Chenery*  
*John G. Drew*

Subscribed and sworn to be-  
fore me this 3rd day of  
March, 1917. My com-  
mission expires on the 3rd  
day of October, 1917.

*J. H. Hapewell*  
Notary Public,  
City of St. Louis.

[15461]

cc16

UPRR-001550

ED\_000859\_00001362-00054

RR No. 740.

Articles of Association  
Missouri  
Pacific  
Railroad Company

Location St. Louis

Capital, \$ 300,000,000.

For a term of 900 years

Recorded in  
Vol. 8 of Railroad  
Corporations Page 420

*[Signature]*

**FILED**  
AND COPY ISSUED

MAR 5 1917

*[Signature]*  
Secretary of State.

RR

0017

## EXHIBIT 2B

# POOR'S MANUAL — 1905.

—  
AMERICAN BANK NOTE CO.

NO. 86 TRINITY PLACE,  
NEW YORK,

Engravers and Printers,

STEEL PLATE AND LITHOGRAPHIC

RAILROAD BONDS,

STOCK CERTIFICATES,

TICKETS, MAPS, FOLDERS, ETC. ETC.

UPRR-002028

ED\_000859\_00001362-00057



## 402 POOR'S MANUAL OF RAILROADS—CENTRAL NORTHERN GROUP.

to 70 lbs. Gauge, 4 ft. 1 in. Chartered March 8, 1863; opened in Oct., 1863. Operated and wholly owned by the Calumet and Hecla Copper Mining Co., which pays any deficit that may occur for the privilege of having its ore transported free. Locomotives, 14. Cars—passenger, 1; freight (box, 4; stock, 57; flat, 112; ore, 639), 812; other, 38—total, 831.

Operations, year ending Dec. 31, 1903.—Trains run (freight), 23,259 miles. Tons freight moved, 1,864,644; ton-miles, 13,984,830. Earnings (freight), \$157,978. Operating expenses and taxes, \$157,978.

General Balance Sheet, Dec. 31, 1903.—Capital stock (\$150,000 auth.; \$100 shares), \$100,000; unfunded debt, \$1,408,188—total, representing cost of road and equipment, \$1,508,188.

Directors.—Alexander Agassiz, Cambridge, Mass.; Quincy A. Shaw, Boston, Mass.; James MacNaughton, W. M. Gibson, Will A. Childs, Calumet, Mich. OFFICERS: ALEXANDER AGASSIZ, Pres.; Boston, Mass.; E. D. Johnson, Sec. & Treas.; James MacNaughton, Gen. Mgr., Calumet, Mich. GENERAL OFFICE, Calumet, Mich.

**ILLINOIS NORTHERN RY.**—Hoyne Ave. to Elsdon, Chicago, Ill., 9.57 miles. Sidings, 12.05 miles. Gauge, 4 ft. 8½ in. Rail (steel), 76 lbs. A belt road directly connecting twenty-one railroads. Chartered March 29, 1901; road opened as above Aug. 1, 1902. Locomotives, 10. Flat cars, 8.

Operations, year ending June 30, 1904.—Earnings (freight, \$69,218; other, \$98,853), \$168,071. Operating expenses, \$151,725. Net earnings, \$16,346; other receipts, \$508—total, \$16,854. Payments: Taxes, \$974; permanent improvements, \$3,312—total, \$4,286. Surplus, 12,568; surplus forward, \$12,103; additions for year, \$5,123—total, \$30,794. Deductions for year, \$15,652. Net surplus June 30, 1904, \$15,142.

General Balance Sheet, June 30, 1904.—Capital stock (\$100 shares), \$500,000; current liabilities, \$202,891; profit and loss, \$15,142—total, \$718,033. Contra: Cost of road, \$45,939; equipment, \$61,924; materials, etc., \$11,232; cash and current assets, \$179,932—total, 718,033.

Directors.—J. C. Fetzer, Owen W. Jones, F. B. Montgomery, C. T. Bradford, A. G. Hultkins, Chicago, Ill. OFFICERS: J. C. FETZER, Pres.; Owen W. Jones, 1st Vice-Pres.; F. B. Montgomery, 2d Vice-Pres. & Gen. Mgr.; C. T. Bradford, Treas.; A. G. Hultkins, Sec., Chicago, Ill. GENERAL OFFICE, 7 Monroe St., Chicago, Ill.

**ILLINOIS SOUTHERN RY. (THE)**—Salem to Moro Landing, Ill., 73.7 m.; Mississippi River Transfer, 1 m.; Little Rock Landing to Bismarck, Mo., 43.19 m.; Sparta to Rosborough, Ill., 5 m.; Missouri June, to Chester, Ill., 10.7 m.—total, 138.56 m.; total track owned (steel; 56 to 83 lbs.), 155.93 miles. Trackage: Illinois Central RR. Centralia to Branch June, Ill., 2.75 miles. Successor, after foreclosure sale, May 16, 1903, to the Centralia and Chester RR. Co. (see MANUAL for 1899, page 273). On June 1, 1900, the company took possession of the property, consisting of the line from Salem to Chester, Ill. (including Illinois Central trackage), and the branch from Sparta to Rosborough, Ill. In order to furnish a market for the coal on its road, the company deemed it advisable to have a line into the lead district of Missouri, and the properties of the St. Louis and Southern Illinois RR. Co., from Missouri June, Ill., to the east bank of the Mississippi River, and of the Southern Missouri Ry. Co., from the west bank of the Mississippi River to Bismarck, Mo., were acquired for that purpose. The through line to Bismarck was opened for traffic on Aug. 17, 1903. Locomotives, 13. Cars—passenger, 5; combination, 5; freight (box, 37; flat, 43; coal, 300), 385; service, 46—total, 441. Also, 1 transfer steamer and 1 pile driver.

Operations, year ending June 30, 1904.—Trains run (passenger, 128,615; freight, 96,695; other, 181,692), 477,002 miles. Passengers carried, 136,350; carried one mile, 3,339,990. Tons freight moved, 240,575; ton-miles, 6,455,090. Earnings (passenger, \$58,062; freight, \$230,581; other, \$12,457), \$301,100. Operating expenses, \$165,320. Net earnings, \$141,810. Payments: Interest on bonds, \$127,667; other interest, \$3,841; taxes, \$5,994—total, \$137,502. Surplus, \$4,309.

General Balance Sheet, June 30, 1904.—Capital stock (\$1,000,000 6 p. c. cumulative preferred and \$1,000,000 common; \$100 shares), \$5,000,000; funded debt (4s of Dec. 1, 1903), \$4,000,000; bills payable, \$77,783; current liabilities, \$74,897; interest accrued, not due, \$13,333; equipment notes, \$150,614—total, \$9,316,573. Contra: Cost of road and equipment, \$8,932,331; real estate, \$6,547; materials, etc., \$109,504; cash and current assets, \$254,140—total, \$9,316,572.

Funded Debt.—The funded debt outstanding as per general balance sheet consists of (\$5,000,000 auth.) 1st gold 4s of Dec. 1, 1903, interest June 1 and Dec. 1, at the agency of the company in New York, N. Y. The bonds were issued to retire a prior issue of bonds, fund indebtedness of the company, and provide for improvements and equipment. The \$1,000,000 of unissued bonds are reserved for improvements and equipment, not exceeding \$200,000 of them to be issued in any one year.

Directors.—J. R. Walsh, J. W. Walsh, C. F. Weinland, L. A. Walton, Maurice Rosenfeld, Wm. Barry, Samuel Insull, Chicago, Ill. OFFICERS: J. W. WALSH, Pres.; M. Rosenfeld, Vice-Pres.; C. F. Weinland, Sec. & Treas.; A. F. Williams, Aud., Chicago, Ill. GENERAL OFFICE, Grand Central Station, Chicago, Ill.

**ILLINOIS TERMINAL RR.**—Alton to Hartford, Ill., 6 m.; leased, Wabash RR., Hartford to Edwardsville June, 6.8 m.; trackage, Wabash RR., Edwardsville June, to Edwardsville, 1.7 m.—total, 14.5 miles. Sidings, etc., 11.3 miles. Gauge, 4 ft. 8½ in. Rail (steel), 60 lbs. Chartered July 6, 1895, under the laws of Illinois; road opened Feb. 22, 1898; extension Nov. 26, 1899. This road was built for the purpose of supplying terminal facilities to the railroads entering the city of Alton, and also for the purpose of developing the manufacturing interests of that city. Locomotives, 6. Cars—passenger, 2; freight (coal), 100; service, 5—total, 107.

Operations, year ending June 30, 1904.—Trains run (passenger, 25,240; freight, 25,350), 50,590 miles. Passengers carried, 34,029; carried one mile, 393,028. Tons freight moved, 392,853; ton-miles, 5,107,059. Earnings (passenger, \$10,899; freight, \$100,461; other, \$9,020), \$120,380. Operating expenses, \$72,912. Net earnings, \$47,468; other receipts, \$197—total, \$47,665. Payments: Interest on bonds, \$9,250; taxes, \$2,520; other charges, \$3,470—total, \$15,240. Surplus, \$32,425; surplus forward, \$37,284—total, \$69,709.

General Balance Sheet, June 30, 1904.—Capital stock (\$100 shares), \$200,000; funded debt (1st 5s of 1921, int. J. & J., \$200,000 auth.), \$185,000; current liabilities, \$15,000; profit and loss, \$69,709—total, \$469,709. Contra: Cost of road and equipment, \$246,463; stock given with bonds, \$200,000; cash and current assets, \$23,224—total, \$469,709.

Directors.—W. E. Smith, C. Lewis, R. H. Lewis, H. H. Ferguson, Geo. M. Lewis, Alton, Ill. OFFICERS: WILLIAM ELLIOT SMITH, Pres.; Geo. M. Lewis, Vice-Pres.; R. H. Lewis, Treas.; Chas. Lewis, Sec.; H. H. Ferguson, Gen. Mgr., Alton, Ill. GENERAL OFFICE, Alton, Ill.

**ILLINOIS VALLEY BELT RR. (THE)**—A connecting railway between Peoria and Pekin, Ill., 2.5 miles. Gauge, 4 ft. 8½ in. Owns 4 locomotives.

Operations, year ending June 30, 1904.—Earnings (switching), \$69,098. Operating expenses, \$86,783. Deficit, \$17,685. Net earnings, \$69.

General Balance Sheet, June 30, 1904.—Capital stock, \$25,000; current liabilities, \$20,376—total, \$45,376. Contra: Cost of road, \$25,000; cash and current assets, \$3,612; profit and loss, \$16,734—total, \$45,376.

Directors.—E. E. Dore, J. P. Griffin, M. F. Gallagher, A. E. George, J. R. Hawkins, Chicago, Ill. OFFICERS: E. E. DORE, Pres. & Gen. Mgr.; J. P. Griffin, Sec. & Treas., Chicago, Ill. GENERAL OFFICE, Chicago, Ill.

**INDIANA HARBOR RR.**—Projected: Indiana Harbor, Ind., to Danville, Ill., 106 miles. Completed to April, 1905: Indiana Harbor to Hartsville, Ind., 10 miles. Gauge, 4 ft. 8½ in. Rail (steel), 70 lbs. Incorporated

For additional particulars see the Ready Reference Bond List in the Railroad Manual Appendix, published separately. See also Poor's Directory of Railway Officials.

## POOR'S MA

Nov. 25, 1902. The company, on Feb. 1, 1905, to of the Chicago Junction Ry. Co., from Whitney, Chicago Belt Ry., from Hammond, to Grasseville from the Union Stock Yards to Chappell, Ill. Harbor, Ind., to Franklin Park, Ill. Locomotive

Financial Statement, April 1, 1905.—Harbor RR. Co. of Ill., \$1,000,000; East Chicago \$1,450,000. Estimated cost to completion, \$5,000,000.

Directors.—C. W. Hotchkiss, W. C. Bro Honor Palmer. OFFICERS: C. W. HOTCHKISS, Treas., Sec.; Charles F. Cox, Treas., New York Seymour, Chief Eng., Chicago, Ill. PRINCIPAL

**INDIANA NORTHERN RR.**—St lb. steel rail. Gauge, 4 ft. 8½ in. Chartered 4 connecting the Lake Shore and Michigan Sou port, the Michigan Central, and the Indiana, facturing plants at South Bend, Ind. Locomoti ating expenses, \$5,689. Net earnings, \$5,063. Deficit, \$4,789. Capital stock (\$100 shares), \$1 South Bend, Ind. OFFICERS: JAMES OLIVER, Ford, Sec.; M. M. Matthews, Traf. Mgr., South

**INDIANAPOLIS UNION RY.**—(Belt RR.; see appended statement), 11.71 m m.), 11.10 m.; sidings (owned 3.68 m.; leased lbs. Established in 1850. The Belt RR. is l nal road, providing terminal facilities and do these accommodations a charge is made on a no more. In addition to the charge for of rental, out of which is paid interest on bond companies. The capital is furnished by the L. Ry. Co. The following named also use the companies: Peoria and Eastern; Indianapolis and Western, and Chicago, Indianapolis and I

Operations, year ending June 30, 190 \$604,400. Operating expenses, \$603,950. Net ments: Interest on bonds, \$45,000; taxes, \$ forward (\$222,553; less deductions during the

General Balance Sheet, June 30, 1 interest M. & N.), \$1,000,000; current liabilities \$2,235,698. Contra: Cost of road an \$40,630; cash and current assets, \$146,832—tc

**RAILROAD LEASED**

**Belt RR. and Stockyard (Ind**

11½). Around City of Indianapolis, Ind., 24 track, 9.39 m.; total track, 21.10 m. ties, 17. Freight cars, 10. Leased to t apolis Union Ry. Co., for 999 years, fro 1882.

Income Account, year ending Dec. 3 Rental, \$49,577; other receipts, \$177,366; Investments, \$2,000; interest account, \$3.

**Board of Managers, I. U. Ry.**—Cincinnati, O.; James McCrea, Joseph Woi Pa.; E. F. Osborn, Vice-Pres., Cincinnati, I Indianapolis, Ind. GENERAL OFFICE, Indi

**IOLA AND NORTHERN RY**

ft. 8½ in. Rail (steel), 60 lbs. Organizer Locomotive, 1; combination car, 1.

Operations, year ending June 30, 1 carried one mile, 35,889. Tons freight mo \$5,994; other, \$276), \$7,790. Operating ex \$2,546; surplus forward, \$1,635—total, \$4,201

General Balance Sheet, June 30, liabilities, \$1,048; profit and loss, \$4,201—tc current assets, \$3,317—total, \$76,649.

Directors.—S. S. Palmer, Princeton, J. A. Jordan, J. C. Thurman, Green Bay, W Vice-Pres., Green Bay, Wis.; M. T. Cox, Aud., Green Bay, Wis. GENERAL OFFICE

**IVORYDALE AND MILL C**

Ry. at Ivorydale, O., and June B. & O. S. 8½ in. Chartered April 1, 1890; road open most of it is done for the Procter & Ga

3. Cars (box, 7; flat, 7; rack, 5; coal, 1), Operations, year ending June 30, expense, \$51,497. Net earnings, \$7,067. ) \$1,335.

General Balance Sheet, June 30 —total, \$107,223. Contra: Cost of equipn total, \$107,223.

Directors.—William A. Procter, W Cincinnati, O. OFFICERS: R. P. BUCHAN, Cincinnati, O. GENERAL OFFICE, Cincinnati

For additional particulars see the Ready Reference Bond List in the Railroad Manual Appendix, published separately. See also Poor's Dir



## EXHIBIT 2C

POOR'S  
MANUAL  
OF  
RAILROADS  
—  
1920

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BLAIR & CO.,

INCORPORATED

---

24 BROAD STREET

NEW YORK

INVESTMENT SECURITIES

UPRR-002042

ED\_000859\_00001362-00060



## ADDENDA

2125

## Private or Close Corporations (Continued).

Name of Company.	Classification.	For Latest Statement see—
Galesburg & Great Eastern RR.	No recent information available.	Poor's Manual for 1919, p. 2077
Garnerville RR.	Switching Line owned by Rockland Print Works.	Poor's Manual for 1918, p. 1375
Glenfield & Western RR.	Owned by Gould Paper Co., and Dexter Pulp & Paper Co.	Moody's Manual for 1918, p. 516
Goble, Nehalem & Pacific RR.	Logging road exclusively.	Moody's Manual for 1918, p. 516
Green Bay & Eastern RR.	No track laid on this project.	Moody's Manual for 1918, p. 557
Hetch Hetchy RR.	Owned by City and County of San Francisco.	
Hornos RR.	No recent information, mail returned.	Poor's Manual for 1918, p. 1732
Hudson Highland Bridge & Ry. Co.	Company inactive.	Moody's Manual for 1918, p. 675
Illinois Midland RR.	No recent information; mail returned.	Poor's Manual for 1919, p. 2077
Illinois Northern RR.	Owned by International Harvester Corp.	Moody's Manual for 1918, p. 604
Illinois Southern RR.	Operations suspended Dec. 12, 1919.	Poor's Manual for 1919, p. 693
Inland Ry.	Close corporation; no stock on market.	E. E. Paxton, Sec. & Mgr., Salt Lake City, Utah.
Island RR.	Stock all owned by Mutual Term. Co. of Buffalo.	Moody's Manual for 1918, p. 617
Jalapa RR. & Power Co.	Stock closely held.	Office, 15 Broad St., New York.
Johnstown & Stony Creek RR.	Stock all owned by Federal Steel Co.	Moody's Manual for 1918, p. 618
Kanawha Central RR.	No recent information; mail returned.	Poor's Manual for 1919, p. 2077
Kansas & Oklahoma Southern Ry.	No track yet laid on this project.	Moody's Manual for 1918, p. 622
Kansas City Northwestern Ry.	Operations suspended indefinitely.	Poor's Manual for 1919, p. 1852
Kentwood & Eastern RR.	Lease expired April 21, 1918; road dismantled.	Poor's Manual for 1919, p. 737
Kinnua Hemlock RR.	No recent information.	Poor's Manual for 1919, p. 2077
Klickitat Northern RR. Co.	Owned by Western Pine Lumber Co.	Office, Klickitat, Wash.
Lafayette Union Ry.	Switching facilities to Industrial tracks.	Poor's Manual for 1918, p. 238
Lake Charles Ry. & Nav. Co.	Operations abandoned in 1919.	Poor's Manual for 1919, p. 742
Lake Terminal RR.	Stock all owned by Federal Steel Co.	Poor's Manual for 1918, p. 1029
Laurel & Tallahoma Western Ry.	Logging road.	Poor's Manual for 1918, p. 2117
Lead Belt Ry.	No recent information obtainable.	Poor's Manual for 1918, p. 1732
Leetonia RR.	Stock all owned by Central Leather Co.	Moody's Manual for 1918, p. 1542
Little River RR.	Stock all owned by Little River Lumber Co.	Moody's Manual for 1918, p. 669
Lorain & Southern RR.	Stock practically all owned by Ohio Quarries Co.	Moody's Manual for 1918, p. 670
Louisiana & Pacific Ry.	Close corporation; no securities on market.	Poor's Manual for 1919, p. 788
Louisiana & Pine Bluff Ry.	Stock all owned by Frost-Johnson Lumber Co.	Moody's Manual for 1918, p. 1543
Louisville & Pike County RR.	Owned by Pike County, Ill.	Poor's Manual for 1918, p. 1810
Lula-Homer RR. Co.	No track yet laid on this project.	Moody's Manual for 1918, p. 630
McKeesport Connecting RR.	Stock all owned by National Tube Co.	Moody's Manual for 1918, p. 631
McKeesport Terminal RR.	Stock owned by American Sheet & Tin Plate Co.	Moody's Manual for 1918, p. 631
Madison County Ry. Co.	Privately owned corporation.	Office, Troy, N. Y.
Magma Arizona RR.	Stock practically all owned by Magma Copper Co.	Moody's Manual for 1918, p. 633
Malvern & Freco Valley Ry.	Stock all owned by Wis. & Arkansas Lumber Co.	Moody's Manual for 1918, p. 1514
Manila & Southwestern Ry.	No recent information available.	Poor's Manual for 1918, p. 1732
Mansfield Ry. & Trans. Co.	Stock all owned by Frost-Johnson Lumber Co.	Moody's Manual for 1918, p. 701
Marlington & Camden RR.	No recent information available.	Poor's Manual for 1918, p. 1732
Mascot & Western RR.	Stock owned by Mascot Copper Co.	Poor's Manual for 1918, p. 2002
Massena Terminal RR.	Stock owned by St. Lawrence Securities Co.	Moody's Manual for 1918, p. 707
Massillon Belt Ry.	No recent information available.	Poor's Manual for 1918, p. 1724
Mauch Chunk Switchback Ry.	No recent information available.	Poor's Manual for 1918, p. 1732
Mercer Valley RR.	Stock all owned by Union Steel Co.	Moody's Manual for 1918, p. 703
Mexican Union Ry., Ltd.	No recent information available.	Poor's Manual for 1918, p. 1303
Midland Ry. of Manitoba.	Owned jointly by Gt. North. & No. Pac. Ry. Cos.	Poor's Manual for 1918, p. 1216
Milltown Air Line Ry.	Owned by Milltown Lumber Co.	Office, Milltown, Ga.
Minatitan RR. Co.	No recent information available.	Poor's Manual for 1918, p. 1733
Minneapolis & Central Minn. Ry.	No track laid on this project.	Moody's Manual for 1918, p. 719
Miss. Arkansas & Western Ry.	Owned by Bliss Cook Oak Co.	Moody's Manual for 1918, p. 730
Mohawk RR.	Owned by Mohawk Mining Co.	Poor's Manual for 1918, p. 1032
Monroe & Southwestern Ry.	Owned by Grayling Lumber Co.	Moody's Manual for 1918, p. 733
Montreal Central Terminal Co.	No track laid on this project.	Moody's Manual for 1918, p. 776
Morgan-Run Ry.	No recent information available.	Poor's Manual for 1918, p. 1733
Morrissey, Fernie & Michel Ry.	Stock all owned by Crow's Nest Pass Coal Co.	Moody's Manual for 1918, p. 778
Mount Pleasant Southern Ry.	Yard Tracks, Louisville & Nashville RR.	Poor's Manual for 1918, p. 612
Nevada Short Line Ry.	No recent information available.	Poor's Manual for 1918, p. 1733
Newaukum Valley Ry.	Owned by Carlisle Pennell Lumber Co.	Poor's Manual for 1918, p. 2003
Newburg & South Shore RR.	Capital stock all owned by Amer. Steel & Wire Co.	Poor's Manual for 1918, p. 54
New Castle & Butler RR.	No recent information.	Poor's Manual for 1919, p. 2007
New Hanover Transit Ry.	No recent information.	Poor's Manual for 1919, p. 2077
New Haven & Dunbar RR.	Capital stock all owned by American Mang. Mfg. Co.	Moody's Manual for 1918, p. 1670
New York Dock Ry.	Stock all owned by New York Dock Co.	Poor's Manual for 1918, p. 276
Nittany Valley RR.	No recent information.	Poor's Manual for 1919, p. 2077
North Shore Ry.	No recent information available.	Moody's Manual for 1918, p. 958
North Shore Ry. & Navigation Co.	No track laid at last report.	Moody's Manual for 1918, p. 965
Northern Dakota Ry.	Operations ceased.	Poor's Manual for 1919, p. 1915
Northern Liberties Ry.	Stock all owned by Amer. Steel & Wire Co.	Moody's Manual for 1918, p. 967
Northwestern Coal Ry.	Stock all owned by Pittsburg Coal Co.	Poor's Manual for 1918, p. 66
Onaway & North Michigan Ry.	Private logging road.	Poor's Manual for 1918, p. 1733
Ousachita Valley Ry.	Operations ceased May 20, 1920.	Poor's Manual for 1919, p. 1127
Owasco River Ry.	Stock all owned by International Harvester Corp.	Moody's Manual for 1918, p. 989

(Continued on next page.)

## EXHIBIT 2D

CERTIFICATE TO MISSOURI-ILLINOIS R. R.

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FINANCE DOCKET No. 1235.

IN THE MATTER OF THE APPLICATION OF THE MISSOURI-ILLINOIS RAILROAD COMPANY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

*Submitted March 9, 1921. Decided March 14, 1921.*

Certificate issued authorizing the acquisition and operation of a line of railroad in Illinois and Missouri.

*W. Frank Carter* for the Missouri-Illinois Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, DANIELS, EASTMAN, AND POTTER.  
BY DIVISION 4:

The Missouri-Illinois Railroad Company, a corporation organized for the purpose of engaging in interstate commerce, on February 15, 1921, filed an application for a certificate of public convenience and necessity authorizing it to acquire and operate a line of railroad formerly owned and operated by the Illinois Southern Railway Company. The applicant states that certain of its officers and directors desire to hold similar positions in the Mississippi River & Bonne Terre Railroad Company, and asks our approval thereof, pursuant to the provisions of paragraph (12) of section 20a of the interstate commerce act.

Upon receipt of the application, notice of the filing thereof was given to the governors of Illinois and Missouri, in which states the line of railroad in question is situated, and like notice was published for three consecutive weeks in a newspaper of general circulation in each county in or through which said line extends. An urgent recommendation that the application be granted was filed by the authorities of each state affected, and the case was thereupon submitted upon the return to our questionnaire without formal hearing.

The line of railroad in question extends from Salem, Marion county, Ill., in a general southwesterly direction through the counties of Marion, Clinton, Washington, Perry, and Randolph, in Illinois, to the east bank of the Mississippi River, where trains are ferried across that river by steam barge; then through Ste. Genevieve and St. Francois counties, in Missouri, to Bismarck, Mo. This line, with its branches, covers a total distance of 133.41 miles, and was operated continuously for 20 years or more, up to about a year ago. At that

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time the property was in the hands of a receiver, and operation thereof was discontinued by order of the court. In October, 1920, a decree of foreclosure was entered, directing the sale of the property, fixing no price, but reserving the right to reject all bids based on scrap value. At the sale the property was bid in by a representative of the bondholders for \$725,000, the next highest bid being \$700,000, which bid was made by junk dealers. The bid for the bondholders was also made on the basis of scrap value and with the intention of dismantling the property. Subsequently, however, certain interested shippers whose properties are located on the line and who are entirely dependent upon it for service, brought about the organization of the applicant and offered \$900,000 for the property, agreeing to operate it for at least 10 years, that stipulation being imposed by the court as a condition for confirming the sale. The applicant proposes to issue \$1,800,000 par value of common stock in exchange for the property and \$300,000 of bonds, the proceeds of the bonds to be used for additions and betterments only. Such bonds have already been subscribed for by interested shippers. The stock, except qualifying shares, will be owned by six corporations operating lead mines to be served by the line in question.

The region traversed by this line is well populated, and it reaches a number of communities which are not served by any other carrier. The chief industries in the territory to be served are farming, dairying, lumbering, and coal and lead mining, all of which are well established. The most important connection is with the Mississippi River & Bonne Terre Railroad near Bismarck, affording a direct route for the transportation of coal from southern Illinois to the lead mines in southeastern Missouri.

The applicant bases its prediction of successful operation chiefly on the advances in rates which have become effective since operation of the line was discontinued, and presents an estimate of probable income, based on available traffic, as follows:

Operating revenues-----	\$1,118,000
Operating expenses-----	856,000
Net revenues-----	262,000
Railway tax accruals-----	40,000
Operating income-----	222,000
Nonoperating income-----	3,000
Gross income-----	225,000
Deductions (hire of equipment)-----	40,000
Net income-----	185,000

On the basis of the proposed capitalization of \$1,800,000 of stock and \$300,000 of bonds, this net income would provide a return of approximately 9 per cent, and would afford a return of over 15 per cent upon the actual investment of the applicant. The original cost

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of construction of the line, however, is said to have been over \$7,000,000. The present value of the property, as well as the propriety of the proposed capitalization, are matters upon which we are not called upon to pass in this proceeding and we express no opinion with reference thereto. It is enough to say that the property is capable of affording a needed service, and we think, therefore, that the applicant should be given opportunity to render that service.

No evidence was presented on the question of whether any of the applicant's directors or officers should be permitted to hold similar positions in the corporate organization of the connecting carrier. We will not, therefore, attempt to pass upon that point in this proceeding, but will determine the question at a later time if appropriate application shall be made.

This is not a case where one carrier is seeking to take over the property of another which is now being operated, but a case where a newly organized company is seeking to acquire and operate property which has been abandoned for railroad purposes. Upon the facts presented we find that the present and future public convenience and necessity require the acquisition and operation of the line of railroad in question, as prayed for by the applicant. A certificate to that effect will accordingly be issued.

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*Certificate of Public Convenience and Necessity.*

Investigation of the matters and things involved in this proceeding having been had, and said Division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

*It is hereby certified,* That the present and future public convenience and necessity require the acquisition and operation by the Missouri-Illinois Railroad Company of the line of railroad formerly owned and operated by the Illinois Southern Railway Company, extending from Salem, Ill., to Bismarck, Mo.

*It is ordered,* That said Missouri-Illinois Railroad Company be, and it is hereby, authorized to acquire and operate said line of railroad.

*It is further ordered,* That said Missouri-Illinois Railroad Company when filing schedules establishing or adopting rates and fares on said line of railroad, shall in such schedules refer to this certificate by title, date, and docket number.

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## EXHIBIT 2E



CERTIFICATE OF RECORD  
STATE OF MISSOURI,

IN THE RECORDER'S OFFICE

County of Ste. Genevieve } ss

I, Rehly J. Rigdon, Clerk of the Circuit Court and Ex-Officio Recorder within and for the County aforesaid, do certify that the Instrument of Writing hereto attached was filed for record in my office on the 30 day of May, 1921, at 10 o'clock, 30 min 00 M., and that the same is duly recorded in said office in Book 90, 91 for Recording Transfers at Pages 91 to 103 & inclusive

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court, Done at Ste. Genevieve Missouri, this 30th day of May, 1921.

Rehly J. Rigdon  
Circuit Clerk and Ex-Officio Recorder.

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AGREEMENT, dated February 5th, 1921, between HERBERT A. LUNDAHL, as Special Master appointed by and referred to in the Decrees of Foreclosure and Sale made in the causes hereinafter mentioned (hereinafter called the "Special Master"), party of the first part;

THE ILLINOIS SOUTHERN RAILWAY COMPANY, a corporation organized and existing under the laws of the State of Illinois, (hereinafter called "The Railway Company"), party of the second part;

WILLIAM W. WHEELLOCK, as Receiver of the properties of the Railway Company, (hereinafter called the "Receiver"), party of the third part;

FESTUS J. WADE of St. Louis, Missouri, and FIRST TRUST AND SAVINGS BANK, a corporation organized and existing under the laws of the State of Illinois, as Trustees under the First Mortgage or Deed of Trust (hereinafter called "First Mortgage") of the Railway Company dated June 1, 1911, (hereinafter sometimes called the "First Mortgage Trustees"), parties of the fourth part;

BRECKINRIDGE JONES, of St. Louis, Missouri, and ILLINOIS TRUST & SAVINGS BANK, a corporation organized and existing under the laws of the State of Illinois, as Trustees under the Income Mortgage or Deed of Trust (hereinafter called "Income Mortgage") of the Railway Company dated June 1, 1911 (hereinafter sometimes called the "Income Mortgage Trustees"). parties of the fifth part;

WILLIAM T. ABBOTT, of Chicago, Illinois, (hereinafter called the "Purchaser"), party of the sixth part; and

MISSOURI-ILLINOIS RAILROAD COMPANY, a corporation organized and existing under the laws of the State of Missouri (hereinafter called the "Purchaser's Assign"), party of the seventh part;

WHEREAS, in a certain cause pending in the District Court of the United States for the Northern District of Illinois,

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Eastern Division, In Equity No. 1113, and in a certain cause pending in the District Court of the United States for the Eastern District of Illinois, In Equity No. 1369, and in a certain cause pending in the District Court of the United States for the Eastern District of Missouri, Eastern Division, In Equity No. 5060, wherein Festus J. Wade is complainant and the Railway Company and others are defendants (hereinafter referred to as the "Consolidated Causes"), there were made and entered on June 26, 1920, July 9, 1920, and July 16, 1920, respectively, nunc pro tunc as of May 27, 1920, decrees of foreclosure and sale whereby, among other things, it was ordered, adjudged and decreed that the Railway Company should, within ten (10) days after the entry of said decrees of foreclosure and sale, pay or cause to be paid to - (1) Festus J. Wade, as Trustee, for the use and benefit of the holders of the outstanding First Mortgage, Forty Year Five Per Cent (5%) Gold Bonds and the unpaid coupons thereto appertaining, issued under and secured by the First Mortgage aforesaid of the Railway Company to the First Mortgage Trustees, dated June 1, 1911, the sum of Two Million, Three Hundred Eighty-nine Thousand, Six Hundred One and 32/100 Dollars (\$2,389,601.32), adjudged by said Decrees of Foreclosure and Sale entered in each of said Consolidated Causes to be the sum due and payable from the Railway Company to the First Mortgage Trustees under said First Mortgage, with interest thereon from the date of the aforesaid Decrees of Foreclosure and Sale to the date of payment; and (2) Illinois Trust and Savings Bank and Breckinridge Jones, as Trustees, for the use and benefit of the holders of outstanding Income Mortgage Forty Year Five Per Cent (5%) Gold Bonds of the Railway Company issued under and secured by the Income Mortgage aforesaid of the Railway Company to the Income Mortgage Trustees, dated June 1, 1911, the sum of One Million, Four Hundred Seventy-eight Thousand, Nine Hundred Seventy-five and 31/100 Dollars (\$1,478,975.31), adjudged by said Decrees of Foreclosure and Sale

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entered in each of said Consolidated Causes to be the sum due and payable from the Railway Company to the Income Mortgage Trustees under said Income Mortgage, with interest thereon from the date of the aforesaid Decrees of Foreclosure and Sale to the date of payment; and

WHEREAS, neither the Railway Company nor anyone on its behalf within ten days after the entry of said Decrees of Foreclosure and Sale or at any other time paid or caused to be paid either of said sums or any sums adjudged by said Decrees of Foreclosure and Sale to be due and owing from the Railway Company to said First Mortgage Trustees or Income Mortgage Trustees aforesaid; and

WHEREAS, by said Decrees of Foreclosure and Sale it was also, among other things, ordered, adjudged and decreed that in default of the payments directed to be made to the First Mortgage Trustees and to the Income Mortgage Trustees aforesaid, said First Mortgage and said Income Mortgage should be foreclosed and all and singular the property, estate, rights, franchises, contracts, privileges, choses in action and effects of the Railway Company, including all property described in the said First Mortgage and the said Income Mortgage or either of them, and all property at the time of such sale in the possession of said William W. Wheelock as Receiver (except only any and all claims in favor of said Railway Company and/or said Receiver, against the United States of America, the Director General of Railroads thereof, or any insurance companies) should be sold in the manner therein set forth, without valuation, appraisement, exemption or extension, and free from any right of redemption, and all the right, title, interest and equity of redemption of the Railway Company, its creditors and stockholders, and of all persons claiming under it or them or any of them, and of all parties to said Consolidated Causes, and to each and every of the Constituent Causes therein consolidated, and of all persons claiming under them or any of them, of, in and to

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said property and every part thereof, should be forever barred and foreclosed subject to the provisions of said Decrees of Foreclosure and Sale, and that the purchaser thereof should take and hold the same forever free and discharged of and from the lien of and trusts under said First Mortgage, of and from the lien of and trusts under said Income Mortgage, and the bonds and coupons secured respectively thereby, and free and discharged of and from any and all liens, claims and demands whatsoever arising out of any order or orders of said courts in said Consolidated Causes, or any action of the Receiver therein, and free from, and discharged of and from any and all liens, claims and demands whatsoever upon or against said railways, rights, franchises and other properties directed to be sold or any part thereof, in favor of any party or parties to said Consolidated Causes, or in favor of any person or persons, firm or firms, corporation or corporations, claiming by, through or under them, or any of them, subject, however, and subject only to the liens, claims and obligations which where decreed in Articles XXIII and XXV of said decrees should be assumed by the purchaser at said sale; and that all of the property described in said Decrees of Foreclosure and Sale decreed to be sold should be sold in the manner set forth in said Decrees at the passenger station of the Railway Company in the City of Salem, Marion County, Illinois, on a day and hour to be fixed by said courts and that said notice of the time, place and terms of such sale describing briefly the property to be sold and referring to said Decrees of Foreclosure and Sale should be published by the Special Master at least once in each week for a term of four weeks preceding the date of such sale, in a newspaper of general circulation, printed and published in the City of St. Louis, Missouri, and in a newspaper of general circulation printed and published in the City of Salem, Marion County, Illinois, and in a newspaper of

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✓ general circulation, printed and published in Chicago, Illinois;  
and

WHEREAS, by said Decrees of Foreclosure and Sale, Herbert A. Lundahl was appointed Special Master to make and conduct said sale, and upon confirmation thereof by said District Courts of the United States wherein said Consolidated Causes are pending, and upon the payment of the purchaser or his assigns of the purchase price or such portion thereof as should be required by said District Courts of the United States to be paid in advance of the delivery of the deed or other instruments of conveyance and transfer by the Special Master, or upon the making by him or them of such provisions for the payment thereof as said District Courts of the United States should approve, to execute and deliver a deed or other proper instrument conveying, assigning and transferring to such purchaser or his assigns the property sold to such purchaser, subject, however, to the provisions of said Decrees of Foreclosure and Sale; and

WHEREAS, September 15, 1920, at 2:00 o'clock in the afternoon, was duly fixed by said District Courts of the United States in and for the Northern District of Illinois, Eastern Division, Eastern District of Illinois, and Eastern District of Missouri, Eastern Division, in orders duly entered in the respective Consolidated Causes therein pending, on July 21st, July 23rd and July 16th, 1920, respectively, and notice of the time, place and terms of sale was duly given in accordance with the provisions of said Decrees of Foreclosure and Sale and in accordance with law; and

✓ WHEREAS, the Special Master on September 15, 1920, at 2:00 o'clock in the afternoon at the passenger station of the Railway Company in the City of Salem, County of Marion and State of Illinois, upon the property to be sold, pursuant to said notice of sale, and in the manner prescribed and upon the terms and conditions specified in said Decrees of Foreclosure and Sale and

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subject to the provisions thereof, and with the right to the purchaser, his successors and assigns, to abandon the use of the properties or any part thereof for railroad purposes, and to dismantle and sell the same or any part thereof, sold, subject to confirmation by the District Courts of the United States wherein said Consolidated Causes are pending, at public auction, to William T. Abbott, the property described in said Decrees of Foreclosure and Sale, decreed by said Decrees to be sold, as an entirety for the sum of Seven Hundred Twenty-five Thousand Dollars (\$725,000), said William T. Abbott being the highest bidder for said property at said sale and having duly qualified as a bidder thereat for said property in the manner provided for in said Decrees of Foreclosure and Sale; and

WHEREAS, the Special Master did, after said sale and on September 27, 1920, September 28, 1920, and September 28, 1920, make reports of said sale to the District Courts of the United States for the Northern District of Illinois, Eastern Division, the Eastern District of Illinois and the Eastern District of Missouri, Eastern Division, respectively, and said reports were duly filed in the respective offices of the respective clerks of said courts on said respective days; and

WHEREAS, thereafter, by orders duly made and entered on December 31, 1920, January 4, 1921, and January 4, 1921, by said District Courts of the United States for the Northern District of Illinois, Eastern Division, Eastern District of Illinois and Eastern District of Missouri, Eastern Division, respectively (hereinafter called "Orders of Confirmation"), said reports were in all things approved and confirmed, and the sale to William T. Abbott of the properties by said Decrees of Foreclosure and Sale directed to be sold as above set forth, was approved, confirmed and made final and absolute by each and all of said courts, subject, however, to all the terms, provisions and conditions of said Decrees of Foreclosure and Sale and said Order of Confirmation confirming the

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Special Master's Sale, and all the reservations to the purchaser, his successors and assigns and to the court in said Decrees contained; and said courts, in said Decrees of Confirmation directed the manner in which the purchase price of said property should be paid or provided for, and further directed the Special Master upon the delivery by the said purchaser to him of Two Million and Eighteen Thousand Dollars (\$2,018,000), face value of said First Mortgage Forty Year Five Per Cent (5%) Gold Bonds of the Railway Company, issued under the First Mortgage, or of a certificate satisfactory to the Special Master entitling him to the possession thereof and upon the payment to him of One Hundred Thousand Dollars (\$100,000) in cash on account of the sum bid by said William T. Abbott, upon request of said purchaser, to sign, seal, execute, acknowledge and deliver a deed or deeds or other proper instruments in a form to be approved by the District Court of the United States, Northern District of Illinois, Eastern Division, or a judge thereof, conveying, assigning and transferring to such purchaser or his grantees, assigns or to such corporation as he might name, all and singular the property, assets, rights, franchise, contracts, privileges, choses in actions and effects of the Railway Company, including all property described in said First Mortgage, and the said Income Mortgage, or either of them, and all property at the time of such sale in the possession of William W. Wheelock, as Receiver of said courts, and all of said railways and other property described and mentioned in said Decrees of Foreclosure and Sale and thereby directed to be sold (except only any and all claims, in favor of said Railway Company and/or said Receiver, against the United States of America, the Director General of Railroads thereof or any insurance companies), subject to all taxes and assessments, being a lien thereon or any part thereof and subject to all the terms, conditions and provisions of said Decrees of Foreclosure and Sale and said Orders of Confirma-

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tion of said courts; and

✓ WHEREAS, there has been delivered to the Special Master by William T. Abbott a certificate entitling said Special Master to the possession of Two Million and Eighteen Thousand Dollars (\$2,018,000) face value of said First Mortgage Forty Year Five Per Cent (5%) Gold Bonds of The Illinois Southern Railway Company, and there has been paid to said Special Master by said William T. Abbott the sum of One Hundred Thousand Dollars (\$100,000), as by said Orders of Confirmation provided; and

WHEREAS, by said Decrees of Foreclosure and Sale and said Orders of Confirmation the Railway Company, the Receiver and the Trustees of the First Mortgage and the Trustees of the Income Mortgage, respectively, were directed severally and respectively to join in the execution and delivery to the purchaser, his successors or assigns, of the deed or deeds or other instruments of conveyance, assignment and transfer, directed to be executed and delivered to the purchaser, his successors or assigns by said Decrees of Foreclosure and Sale and said Orders of Confirmation; and

WHEREAS, William T. Abbott, the purchaser at the foreclosure sale of the property above described, has contracted to transfer and convey all the property purchased by him at said foreclosure sale (except all cash on December 24, 1920, or at any time thereafter, in the hands of the Receiver, and all accounts and bills receivable due said Railway Company or its Receiver) to Missouri-Illinois Railroad Company, party of the seventh part, and hereby directs, as evidenced by his execution of this Indenture, the Special Master, the Railway Company, the Receiver, the First Mortgage Trustees and the Income Mortgage Trustees, to transfer and convey by this instrument to said party of the seventh part, as provided for in and subject to all the terms, conditions and provisions of said Decrees of Foreclosure and Sale and said Orders

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of Confirmation, all said property so contracted to be transferred and conveyed;

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

That said Herbert A. Lundahl, as Special Master aforesaid, party of the first part, in order to carry into effect said sale to William T. Abbott, the purchaser, and to comply with the directions of said William T. Abbott, as aforesaid, to convey the property hereinafter described to Missouri-Illinois Railroad Company, and in pursuance of said Decrees of Foreclosure and Sale and said Orders of Confirmation, and in consideration of one dollar (\$1.00) and other good and valuable considerations, the receipt of which is hereby acknowledged, has granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred and set over and by these presents does grant, bargain, sell, alien, remise, release, convey, confirm, assign, transfer and set over unto the said Missouri-Illinois Railroad Company, party of the seventh part, its successors and assigns, the following property, being a part of the property described in said Decrees of Foreclosure and Sale and said Orders of Confirmation, to-wit:

All and singular the property, estate, rights, franchises, contracts, privileges, choses in action and effects formerly belonging to The Illinois Southern Railway, including all property described in said First Mortgage or Deed of Trust of said Railway Company dated June 1, 1911, and all property described in said Income Mortgage or Deed of Trust of said Railway Company dated June 1, 1911, or either of said Mortgages, also all property of said Railway Company described in Articles XIV and XV of said Decrees of Foreclosure and Sale, and all property at the time of the Foreclosure Sale hereinabove mentioned in the possession of William W. Wheelock, Receiver (except only any and all claims in favor of said Railway Company and/or said Receiver against the United States of America, the Director General of Railroads thereof, or any insurance

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companies, all cash which is now or may hereafter be in the hands of said Receiver, and all accounts and bills receivable due said Railway Company or said Receiver from any person, firm or corporation, which said claims, cash, accounts and bills receivable are hereby expressly reserved from this conveyance).

TO HAVE AND TO HOLD, possess and enjoy, all and singular the above mentioned real and personal property, rights, franchises, privileges and immunities thereto appertaining, hereby conveyed or intended so to be, unto said Missouri-Illinois Railroad Company, its successors and assigns, to its and their own proper use, benefit and behoof forever, free and discharged from any trust or lien imposed thereon by said First Mortgage or said Income Mortgage and free and discharged from any claim, right, interest or equity of redemption, statutory or otherwise, of, in or to the same by or of the Railway Company, its successors and assigns, and by or of the creditors and stockholders of the Railway Company, and by or of any party to said Consolidated Causes aforesaid, and by or of all persons, partnerships and corporations claiming by, under or through the Railway Company, its creditors or its stockholders or any party to said Consolidated Causes or any of them.

SUBJECT, however, to the paramount lien and charge reserved by said District Courts of the United States upon said property for the payment into said Courts in cash of any unpaid part of the purchase price thereof, and subject, also, to all terms, conditions and reservations of said Decrees of Foreclosure and Sale, and said Orders of Confirmation, whether in this Indenture expressly referred to or not.

THIS INDENTURE FURTHER WITNESSETH that The Illinois Southern Railway Company, party of the second part, in consideration of the sum of Ten Dollars (\$10), lawful money of the United States, to it paid, receipt whereof is hereby acknowledged, and pursuant to the directions in said Decrees of Foreclosure and

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Sale and in said Orders of Confirmation/has granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred and set over and by these presents does grant, bargain, sell, alien, remise, release, convey, confirm, assign, transfer and set over unto the said Missouri-Illinois Railroad Company, party of the seventh part, its successors and assigns, all and singular)the)property above described and hereby conveyed by the Special Master, or intended so to be;

TO HAVE AND TO HOLD, POSSESS AND ENJOY, all and singular said proper ty hereby conveyed by the Special Master, or intended so to be, unto said Missouri-Illinois Railroad Company, its successors and assigns, to its and their own proper use, benefit and behoof forever; and

THIS INDENTURE FURTHER WITNESSETH that William W. Wheelock, as Receiver as aforesaid, party of the third part, in consideration of the premises and of the sum of Ten Dollars (\$10), lawful money of the United States, to him in hand paid, receipt whereof is hereby acknowledged, and pursuant to the directions in said Decrees of Foreclosure and Sale, and said Orders of Confirmation contained, has granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred and set over, and by these presents does grant, bargain, sell, alien, remise, release, convey, confirm, assign, transfer and set over unto said Missouri-Illinois Railroad Company, its successors and assigns, all his right, title and interest, as such Receiver in and to all and singular the property above described and hereby conveyed by the Special Master, or intended so to be.

TO HAVE AND TO HOLD, POSSESS AND ENJOY, all and singular said property hereby conveyed by the Special Master, or intended so to be, unto said Missouri-Illinois Railroad Company, its successors, and assigns, to its and their own proper use, benefit and behoof forever; and

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THIS INDENTURE FURTHER WITNESSETH that Festus J. Wade, of St. Louis, Missouri, and First Trust and Savings Bank, a corporation, as Trustees under the First Mortgage of the Railway Company, dated June 1, 1911, parties of the fourth part, in consideration of the premises and of the sum of Ten Dollars (\$10), lawful money of the United States, to them paid, receipt whereof is hereby acknowledged, and pursuant to the directions in said Decrees of Foreclosure and Sale and said Orders of Confirmation contained, have conveyed, remised, released and quit-claimed, and by these presents do convey, remise, release and quit-claim unto Missouri-Illinois Railroad Company, its successors and assigns, all the right, title, interest, claim and demand whatsoever, the said trustees may have acquired in, through or by the said First Mortgage of the Railway Company bearing date the first day of June 1911, of, in and to all and singular the property above described and hereby conveyed, assigned or transferred by the Special Master, or intended so to be.

TO HAVE AND TO HOLD, possess and enjoy, all and singular said property hereby conveyed by the Special Master, or intended so to be, unto said Missouri-Illinois Railroad Company, its successors and assigns, to its and their own proper use, benefit and behoof forever; and

THIS INDENTURE FURTHER WITNESSETH that Breckinridge Jones, of St. Louis, Missouri, and Illinois Trust and Savings Bank, a corporation, as Trustees under the Income Mortgage of the Railway Company dated June 1, 1911, parties of the fifth part, in consideration of the premises and of the sum of Ten Dollars (\$10), lawful money of the United States, to them paid, receipt whereof is hereby acknowledged, and pursuant to the directions in said Decrees of Foreclosure and Sale and said Orders of Confirmation contained, have conveyed, remised, released and quit-claimed, and by these presents do convey, remise, release and quit-claim unto Missouri-Illinois Railroad Company, its successors and assigns, all

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the right, title, interest, claim and demand whatsoever, the said trustees may have acquired in, through or by the said Income Mortgage of the Railway Company bearing date the first day of June 1911, of, in and to all and singular the property above described and hereby conveyed, assigned or transferred by the Special Master, or intended so to be.

TO HAVE AND TO HOLD, possess and enjoy, all and singular said property hereby conveyed by the Special Master or intended so to be, unto said Missouri-Illinois Railroad Company, its successors and assigns, to its and their own proper use, benefit and behoof forever; and

THIS INDENTURE FURTHER WITNESSETH that William T. Abbott, party of the sixth part, purchaser at said foreclosure sale, in consideration of the sum of Ten Dollars (\$10), lawful money of the United States, to him in hand paid, receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred and set over and by these presents does grant, bargain, sell, alien, remise, release, convey, confirm, assign, transfer and set over unto the said Missouri-Illinois Railroad Company, party of the Seventh part, its successors and assigns, all his right, title and interest as such purchaser at said foreclosure sale in and to all and singular the property above described and hereby conveyed by the Special Master, or intended so to be.

TO HAVE AND TO HOLD, possess and enjoy, all and singular said property hereby conveyed by the Special Master, or intended so to be, unto said Missouri-Illinois Railroad Company, its successors and assigns, to its and their own proper use, benefit and behoof forever.

No personal covenant or liability shall be implied against or is assumed or undertaken by the Special Master, the Receiver, the First Mortgage and the Income Mortgage Trustees or any of the parties grantor herein by reason of the execution of this instrument or any recital or covenant herein contained.

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IN WITNESS WHEREOF, the Special Master, the Receiver, William T. Abbott, Festus J. Wade, as Trustee under said First Mortgage, and Breckinridge Jones as Trustee under said Income Mortgage, have hereunto set their hands and seals, and the Railway Company and the First Trust and Savings Bank, as Trustee under said First Mortgage, and the Illinois Trust & Savings Bank, as Trustee under said Income Mortgage, have caused this instrument to be executed in their respective names by their Presidents or Vice-Presidents and under their respective corporate seals, attested by their Secretaries or Assistant Secretaries, all as of the day and year first above written.

Robert Wundahl  
As Special Master.

THE ILLINOIS SOUTHERN RAILWAY COMPANY,

By John G. Wells  
Vice-President.

Attest:

Edward M. Tourteloh  
Secretary

William C. Wadsworth  
As Receiver of the properties of the  
Illinois Southern Railway Company.

FIRST TRUST AND SAVINGS BANK OF CHICAGO,

By Louis Boisset  
Vice President.

Attest:

W. H. Harrison  
Assistant Secretary

Festus J. Wade  
As Trustee under the First Mortgage

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-15-

ILLINOIS TRUST & SAVINGS BANK,

BY

*W. Haskel*  
Vice President.

Attest:

*J. J. [Signature]*  
Asst. Secretary.

*Breckinridge Jones*  
As Trustee under the Income Mortgage.

*William F. Abbott*

STATE OF ILLINOIS }  
COUNTY OF COOK } SS

BE IT REMEMBERED that on this 19<sup>th</sup> day of March, 1921,  
before me *J. Sidney Coudit*, a Notary Public, duly  
commissioned and qualified, personally appeared HERBERT A. LUNDAHL,  
Special Master, grantor in the within instrument, and acknowledged  
the execution of the same, as Special Master as in said instrument  
set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and af-  
fixed my official seal the day and year last aforesaid.

*J. Sidney Coudit*  
Notary Public.

STATE OF ILLINOIS }  
COUNTY OF COOK } SS

BE IT REMEMBERED that on this 19<sup>th</sup> day of March, 1921,  
before me *J. Sidney Coudit*, a Notary Public duly com-  
missioned and qualified, personally appeared WILLIAM W. WHEELLOCK,  
Receiver of the properties of the Illinois Southern Railway Company,  
grantor in the within instrument, and acknowledged the execution of  
the same, as Receiver of the properties of the Illinois Southern

UPRR-001732

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Railway Company, as in said instrument set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last aforesaid.

Medley Raudick  
Notary Public.

STATE OF ILLINOIS }  
COUNTY OF COOK } SS

I, Medley Raudick a Notary Public in and for the State of Illinois, duly commissioned, sworn and qualified, DO HEREBY CERTIFY that on this 19th day of March, 1921, before me personally appeared John W. Walsh, to me known to be the Vice President, and Edward M. Tordella, to me known to be the \_\_\_\_\_ Secretary of the Illinois Southern Railway Company, the corporation that executed the within and foregoing instrument, and they jointly and severally acknowledged to me that they respectively signed and executed said instrument in the name of said The Illinois Southern Railway Company, and affixed thereto the corporate seal of said corporation, freely and voluntarily, and they also jointly and severally acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned; and on oath they also jointly and severally stated that they were duly authorized to execute said instrument for and on behalf and in the name of said corporation and that said seal thereto affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Medley Raudick  
Notary Public in and for the County of Cook and State of Illinois, residing in the City of Chicago in said State.

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STATE OF ILLINOIS }  
COUNTY OF COOK } SS

I, Nedra Caudet, a Notary Public in and for the State of Illinois, duly commissioned, sworn and qualified, DO HEREBY CERTIFY that on this 19th day of March, 1921, before me personally appeared Louis Boiot, to me known to be the Vice President, and W. H. Harrison, to me known to be the Cashier Secretary of the First Trust and Savings Bank, the corporation that executed the within and foregoing instrument, and they jointly and severally acknowledged to me that they respectively signed and executed said instrument in the name of said First Trust and Savings Bank, and affixed thereto the corporate seal of said corporation, freely and voluntarily, and they also jointly and severally acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned; and on oath they also jointly and severally stated that they were duly authorized to execute said instrument for and on behalf and in the name of said corporation and that said seal thereto affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Nedra Caudet  
Notary Public in and for the County of Cook  
and State of Illinois, residing in the City  
of Chicago in said State.

Indiana  
STATE OF ~~MISSOURI~~ }  
County of Orange } SS  
~~CITY OF ST. LOUIS~~

I, Floyd Atkinson, a Notary Public in and for said City in the State aforesaid, DO HEREBY CERTIFY that FESTUS J. WADE, personally known to me to be the same person described in and who executed the foregoing instrument, and personally known

UPRR-001734

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-18-

to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument and executed the same as his free and voluntary act and deed, as Trustee, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 21<sup>st</sup> day of March, 1921.

My commission expires on the 21<sup>st</sup> day of April

A.D. 1921.

Deoyd Arkinson  
Notary Public.

STATE OF ILLINOIS )  
COUNTY OF COOK ) SS

I, J. L. & Co. d. L., a Notary Public in and for the State of Illinois, duly commissioned, sworn and qualified, DO HEREBY CERTIFY that on this 9<sup>th</sup> day of March, 1921, before me personally appeared F. T. Has Krel, to me known to be the Vice President, and F. F. Taylor, to me known to be the Asst Secretary of the Illinois Trust & Savings Bank, the corporation that executed the within and foregoing instrument, and they jointly and severally acknowledged to me that they respectively signed and executed said instrument in the name of said Illinois Trust & Savings Bank, and affixed thereto the corporate seal of said corporation, freely and voluntarily, and they also jointly and severally acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned; and on oath they also jointly and severally stated that they were duly authorized to execute said instrument for and on behalf and in the name of said corporation and that said seal thereto affixed is the corporate seal

UPRR-001735

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of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Richard Cordis  
Notary Public in and for the County of Cook  
and State of Illinois, residing in the City  
of Chicago in said State.

STATE OF MISSOURI }  
CITY OF ST. LOUIS } SS

I, W. A. Crockett, a Notary Public  
in and for said City in the State aforesaid, DO HEREBY CERTIFY that  
BRECKINRIDGE JONES, personally known to me to be the same person  
described in and who executed the foregoing instrument, and personal-  
ly known to me to be the same person whose name is subscribed to  
the foregoing instrument, appeared before me this day in person and  
acknowledged that he signed, sealed and delivered the said instru-  
ment and executed the same as his free and voluntary act and deed,  
as Trustee, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 22<sup>nd</sup>  
day of March, 1921.

My commission expires on the 17<sup>th</sup> day of July  
A.D. 1925.

W. A. Crockett  
Notary Public.

STATE OF ILLINOIS }  
COUNTY OF COOK } SS

BE IT REMEMBERED that on this 19<sup>th</sup> day of March, A.D.  
1921, before me, a Notary Public, duly commissioned and qualified,  
personally appeared WILLIAM T. ABBOTT, grantor in the within instru-  
ment, and acknowledged the execution of the same as his free act

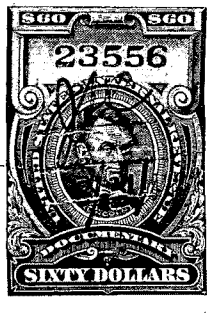
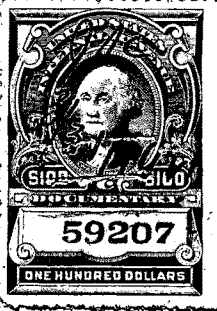
-20-

and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and  
affixed my official seal, the day and year last aforesaid.

*Richard Condit*

Notary Public.



STATE OF MISSOURI,  
County of St. Francois. } ss.

I, H. M. O'Bannon, Recorder of Deeds, within and for said County and State, do hereby certify that the above ~~instrument~~ instrument of writing, with the certificates thereon was, on the 4th day of June, 1921, duly filed for record in this office at 10 o'clock 10 minutes, P.M., and that the same was duly recorded in Book 123 for recording Miscellaneous Deeds, at Page 500.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of my said office. Done at office in Farmington, Missouri, this 10th day of June, A. D., 1921.

H. M. O'Bannon, Recorder of Deeds.

By Mildred Katter Deputy.

STATE OF ILLINOIS }  
 RANDOLPH COUNTY } ss.

The within Instrument was  
 Filed for record this 20 day of  
May 1921 at 8 o'clock A. M.  
 and duly recorded in Volume 80 of Mitchell  
 on Page 24 etc.  
 IN TESTIMONY WHEREOF, I have hereunto set my  
 hand the day and date aforesaid.

W. H. Tripp  
 Clerk and Recorder

STATE OF ILLINOIS } ss. 10485  
 WASHINGTON COUNTY }

This instrument of writing was filed  
 for record this 2nd day of May  
 A. D. 1921 at 8:00 o'clock A. M. and  
 duly recorded in Book No. 134 of  
Records on Page 545

Oscar H. Rinne Clerk  
 Recorder

By \_\_\_\_\_ Deputy

STATE OF ILLINOIS }  
 DEER COUNTY } ss.  
 Filed for Record this 6

of May A. D. 1921  
 at 4 o'clock P. M. and recorded  
 in Book 80 of Deeds  
9  
John D. Roe  
 12 00 Recorder

STATE OF ILLINOIS } 33274  
 CLINTON COUNTY } ss.

This instrument was filed for  
 record in the Recorder's Office of the County  
 aforesaid, on the 22  
 day of April A. D. 1921  
 at 9 o'clock A. M., and recorded  
 in book 54 of Deeds  
 on page 384  
W. H. Klamann  
 RECORDER

STATE OF ILLINOIS }  
 MARION COUNTY } ss.

This instrument was filed for record on the 19th  
 day of April A. D. 1921  
 at 10 o'clock A. M. and duly recorded in  
 on page 20  
 In Testimony Whereof, I have hereunto set my  
 hand the day and date aforesaid.

Frank C. Kinsley  
 RECORDER

No. 2246  
 State of Missouri } ss.  
 County of Ste. Genevieve }  
 Filed for Record this  
 30th day of May A. D. 1921  
 at 10 o'clock, + 30 minute -  
 A. M. and recorded in  
 record No. 90. a Land  
 West of Ste. Genevieve.  
 Co. No. at ages 9 to 103 -  
 + inclusive  
Rel. J. Rigdon  
Recorder

8464 - J - 123 - 500

FILED FOR REC'D  
 JUN 2 1921

Wm O. B...  
13.50  
St. Francis Co.

## EXHIBIT 2F



1-7

DEED.



25 094 15 000001 07

**Mississippi River & Bonne Terre  
Railway.**

~~CONTRACT NO.~~

INDENTURE.  
WITH

ST. JOSEPH LEAD CO.

LEASE.

2505005	2505004
2505006	2509411
2505007	2509412
2505001	2509413
2505002	2509414
2505003	2509415

DATED \_\_\_\_\_ 190\_\_

EXPIRES \_\_\_\_\_ 190\_\_

C

T H I S I N D E N T U R E made the 19th day of November in the year one thousand eight hundred and eighty nine By and Between the ST. JOSEPH LEAD COMPANY, a corporation organized under the laws of New York, party of the First Part and the MISSISSIPPI RIVER AND BONNE TERRE RAILWAY COMPANY, a corporation organized under the laws of Missouri, party of the Second Part,

W I T N E S S E T H:-

T H A T the said party of the First Part in consideration of the sum of Thirty Thousand Dollars to it paid by the party of the Second Part, the receipt whereof is hereby acknowledged, and in consideration of the performance of the agreements hereinafter contained, does hereby lease unto the said party of the Second Part for and during the period of ten years from the 1st day of December, 1889, and for and during such a further period as the parties hereto may hereafter agree upon, the following described property, namely; ALL that portion, now acquired and owned by the party of the First Part, of a strip of land one hundred feet in width and extending from Bonne Terre, Missouri to Riverside near Pevely on the St. Louis Iron Mountain and Southern R. R. said strip being fifty feet on each side of the center line of the railroad now located thereon by the party of the First Part, together with such lands of the party of the First Part with the building thereon as the Party of the Second Part, may require for depot and switch purposes and together with all the engines, rolling stock, railway equipment and tools belonging to the party of the First Part.

The said party of the Second Part to use and enjoy all of the aforementioned property during the continuance of this lease, upon the condition and agreement that it will operate the railroad from Bonne Terre to its connection with the St. Louis Iron Mountain and Southern Railroad, pursuant to the provisions of the Laws of the State of Missouri and for the convenience and benefit of the party of the First Part and that it will carry all freights offered to it by the party of the First Part at reasonable and proper rates.

I N W I T N E S S W H E R E O F the parties hereto have caused the hands of their respective officers to be hereto set, and their corporate seals to be hereto attached on the day and year first above written.

In Presence of :

Hugh N. Camp, Jr.

St. Joseph Lead Co.

W. H. Harris, Vice President.

Hugh N. Camp, Secretary.

Mississippi River & Bonne Terre Railway.

By J. Wyman Jones, President.

Chas. B. Wilde, Secretary.

25 894 11

1-2

No. 797.

QUIT-CLAIM DEED. PRINTED AND FOR SALE BY STANDARD PRINTING CO., HANDBAL, MO.

Class B.

This Indenture, made on the Eleventh day of December  
A. D. One Thousand Eight Hundred and ninety-three by and between  
The St. Joseph Lead Company, a corporation of the

of the County of \_\_\_\_\_ and State of New York part 4 of  
the First Part, and The Mississippi River and Bonne Terre Railway  
a corporation of \_\_\_\_\_  
\_\_\_\_\_ of the County of \_\_\_\_\_ in the State of  
Missouri part 4 of the Second Part:

WITNESSETH, That the said part 4 of the First Part, in consideration of the sum of  
One and <sup>20</sup>/<sub>100</sub> DOLLARS,  
to it paid by the said part 4 of the Second Part, the receipt of which is hereby acknowledged, do ed  
by these presents Remise, Release and Forever Quit Claim unto the said part 4 of the Second Part, the  
following described Lots, Tracts or Parcels of Land, lying, being and situate in the County of St. Francois and Jefferson  
and State of Missouri to wit:

All such right, title and interest as the party of the first  
part now has in the strip of land one hundred feet in width  
which extends from the station of the party of the second  
part at Doe Run in said St. Francois County to the sta-  
tion of the said party of the second part at Riverside in said Jef-  
ferson County and to the Mississippi River, the said strip being  
fifty feet upon each side of the center line of the railway  
track of the party of the second part as the same is now laid  
down from Doe Run to Riverside and to the Mississippi River.

State of Missouri, } s. s.  
County of Jefferson.

In The Recorder's Office.

I, AMOS L. COLMAN, Recorder of Deeds within and for the County aforesaid, do hereby certify that the  
foregoing and annexed instrument of writing with the Certificate thereon, was on the 14th day of  
July A. D. 1897 at 9 o'clock 30 minutes 9 M., duly filed for record in  
this office, and is recorded in the Records of this office in Book # 25  
at Page 382 of 4

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal  
of said office, at Hillsboro, Mo., this 14th day of July, A. D. 1897

By A. L. Colman Recorder.  
R. H. Marsden Deputy

TO HAVE AND TO HOLD The same with all the rights, immunities, privileges and appurtenances thereto  
belonging unto the said part 4 of the Second Part, and its Successors heirs and assigns FOREVER, so that  
neither the said part 4 of the First Part, nor its Successors heirs, nor any other person or persons for  
it or in its name or behalf, shall or will hereafter claim or demand any right or title to  
the aforesaid premises, or any part thereof, but they and every of them shall, by these presents, be excluded and  
forever barred.

IN WITNESS WHEREOF, The said part 4 of the First Part has hereunto set its hand and  
signed by its President and Secretary and its corporate seal the day and year first above written.

Signed, Sealed and Delivered in presence of us.

The St. Joseph Lead Co. Seal  
2 11

UPRR-002831

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New York  
STATE OF MISSOURI,  
County of New York } ss.  
On this Eleventh day of December 1893, before me personally  
appeared Wm. Jones To me personally known, who, being  
by me duly sworn did say that he is the President of the St. Joseph  
his wife, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free  
act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in  
the day and year first above written.

My term expires 1894

Lead Company a Corporation of the State of New York, and that  
the seal affixed to said instrument, is the corporate seal of said  
Corporation and that said instrument was signed and sealed  
in behalf of said Corporation by authority of its Board of  
Directors, and thereupon he acknowledged said instrument  
to be the free act and deed of said Corporation.

STATE OF MISSOURI,  
County of New York } ss.  
On this 11th day of December 1893, before me personally  
appeared

to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed, and the

further declare to be single and unmarried.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in  
the day and year first above written.

My term expires March 30th 1894

2509415  
2505005  
2505006  
2505007  
2505008  
2505002  
2505003  
2505004

John A. Post (49)  
Notary Public  
City & County of New York

# QUIT-CLAIM DEED.

FROM  
The St. Joseph Lead  
Company  
TO  
The Mississippi River &  
Rome Terra Railway

Filed for record this 13th day of  
January, A. D. 1894  
at 10 o'clock minutes A. M.

John C. Alexander  
Recorder  
Filed for record July 14, 1894  
at 9:30 o'clock A. M.

STANDARD FORM.  
This Deed conforms precisely to the form of printed Quit-  
claim Records manufactured by the St. Joseph Lead Com-  
pany, Hannibal, Mo., and now in use in many of the Counties  
of Missouri.

State of Missouri 255 in the Recorder's Office  
County of Jefferson  
H. L. Calverton  
County 30 hereby certify that the within in-  
strument of writing was on the 14th day of July,  
1894, at 9 o'clock and 30 minutes A. M., duly  
filed for record in this office and is recorded in the  
Records of this office in Book 283 at page 35  
in witness whereof, I have hereunto

RECORDED'S FEE, \$1.00  
See my name and official seal  
this 14 day of July, 1894.  
35-283 H. L. Calverton  
Recorder

STATE OF MISSOURI,  
County of St. Francois } ss.  
John C. Alexander  
Recorder of said County, do hereby certify that the within instrument of  
writing was, at 10 o'clock and 30 minutes A. M., on the 13th day of January, A. D. 1894, duly filed for record  
in my office, and is duly recorded in the Records of this office, in Book 283 at page 35

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at



62-402  
2509424 180

**QUIT-CLAIM DEED.**  
BY A CORPORATION.

FROM  
*Doc Run Lead Company*

TO  
*Mississippi River and  
Bonne Terre Railway*

Filed for Record this *14<sup>th</sup>* day  
of *January* A. D. 19*02*  
at *1* o'clock and *23* minutes *P.* M.  
*J. C. Williams*  
RECORDER.  
Per *C. O. Wilkerson*  
DEPUTY.

*Gumbo*  
*to be reconveyed -*  
*800*

RECORDER'S FEE, *800*

This Deed should be promptly recorded, as a failure to record may seriously impair the title to the property.

UPRR-002858

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This Indenture, Made on the Second day of January A. D. One Thousand  
Nine Hundred and two, by and between The Doe Run Lead Company

a corporation of the State of Missouri party of the First Part, and  
the Mississippi River and Bonne Terre Railway  
of the County of a corporation of the ~~and~~ State of Missouri, party  
of the Second Part:

WITNESSETH, That the said party of the First Part, in consideration of the sum of  
One hundred <sup>00</sup>/<sub>100</sub> DOLLARS,  
to it paid by the said party of the Second Part, the receipt of which is hereby acknowledged, does  
by these presents, <sup>Grant</sup> Remise, Release and Forever Quit-Claim unto the said party of the Second  
Part, the following described Lots, Tracts or Parcels of Land, lying, being and situate in the County  
of St. Francois and State of Missouri, to wit:

for a Railway

A strip of land for right-of-way, one hundred feet wide, fifty feet  
each side of the center line, as now located, built and in operation  
on what is termed the Gumbo Line, from Elvins on the main line of  
the Mississippi River and Bonne Terre Railway, to Gumbo Mine.  
Commencing at the Western boundary of the West half of the North-  
west quarter of the Northeast quarter of Section 13, and continuing  
through Section 13 and Sections 12, 11 and 2, to the Western bound-  
ary of the Southeast quarter of the Southeast quarter of said  
Section 2, all within Township 36 North, Range 4 East, St. Francois  
County, Mo., as shown on map hereto attached, forming a part of  
this description.

Also the right of way one hundred feet wide, or fifty feet  
each side of the center line of proposed railway as now located in  
Section 12, Township 36 North, Range 4 East, and Section 7, Town-  
ship 36 North, Range 5 East, from the end of the switch back at  
station 14 plus 57 of the Gumbo Line in the South central part of  
Section 12 of aforesaid County, Range and Township, and running  
thence Northeasterly 861 feet; thence by line curving to right 790  
feet; thence Southeasterly 1460 feet; thence curving to the right  
375 feet; thence Southeasterly 143 feet; thence curving to the left  
1184 feet; thence Northeasterly 1620 feet to the tracks of the  
Mississippi River and Bonne Terre Railway near Central Station, as  
shown in dotted line on blue print map hereto attached, forming  
part of this description.

UPRR-002859

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This Deed of Quitclaim being made in release of, and satisfaction for, a certain deed dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, recorded in the Recorder's office within and for the County of \_\_\_\_\_ aforesaid, in Deed Book \_\_\_\_\_ at pages \_\_\_\_\_.

To Have and to Hold the same with all the Rights, Immunities, Privileges and Appurtenances thereto belonging, unto the said party of the Second Part, and ~~its successors~~ and assigns Forever; so that neither the said party of the First Part, nor any other person or persons, for it or in its name or behalf, shall or will hereafter claim or demand any right or title to the aforesaid premises, or any part thereof, but they and every of them shall, by these presents, be excluded and forever barred.

In Witness Whereof, the said party of the First Part, has caused these presents to be signed by its President

and its corporate seal to be hereunto affixed the day and year first above written.

OK  
Seal

The One Room Lead Company  
By Wynne Jones Prop.

\*Erase this clause in case this Deed is not made in release of some other instrument.

UPRR-002860

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STATE OF Georgia,  
COUNTY OF Thomas } ss. On this 6<sup>th</sup> day of January  
1902, before me appeared J. Wyman Jones  
to me personally known, who, being by me duly sworn, did say that he is the President  
of the Doe Run Lead Company  
a \_\_\_\_\_ Corporation of the State  
of Missouri, and that the seal affixed to said instrument is the corporate seal of said  
Corporation \_\_\_\_\_, and that said instrument was signed and sealed in behalf of  
said Corporation \_\_\_\_\_, by authority of its Board of Directors \_\_\_\_\_  
and said J. Wyman Jones  
acknowledged said instrument to be the free act and deed of said Corporation \_\_\_\_\_.

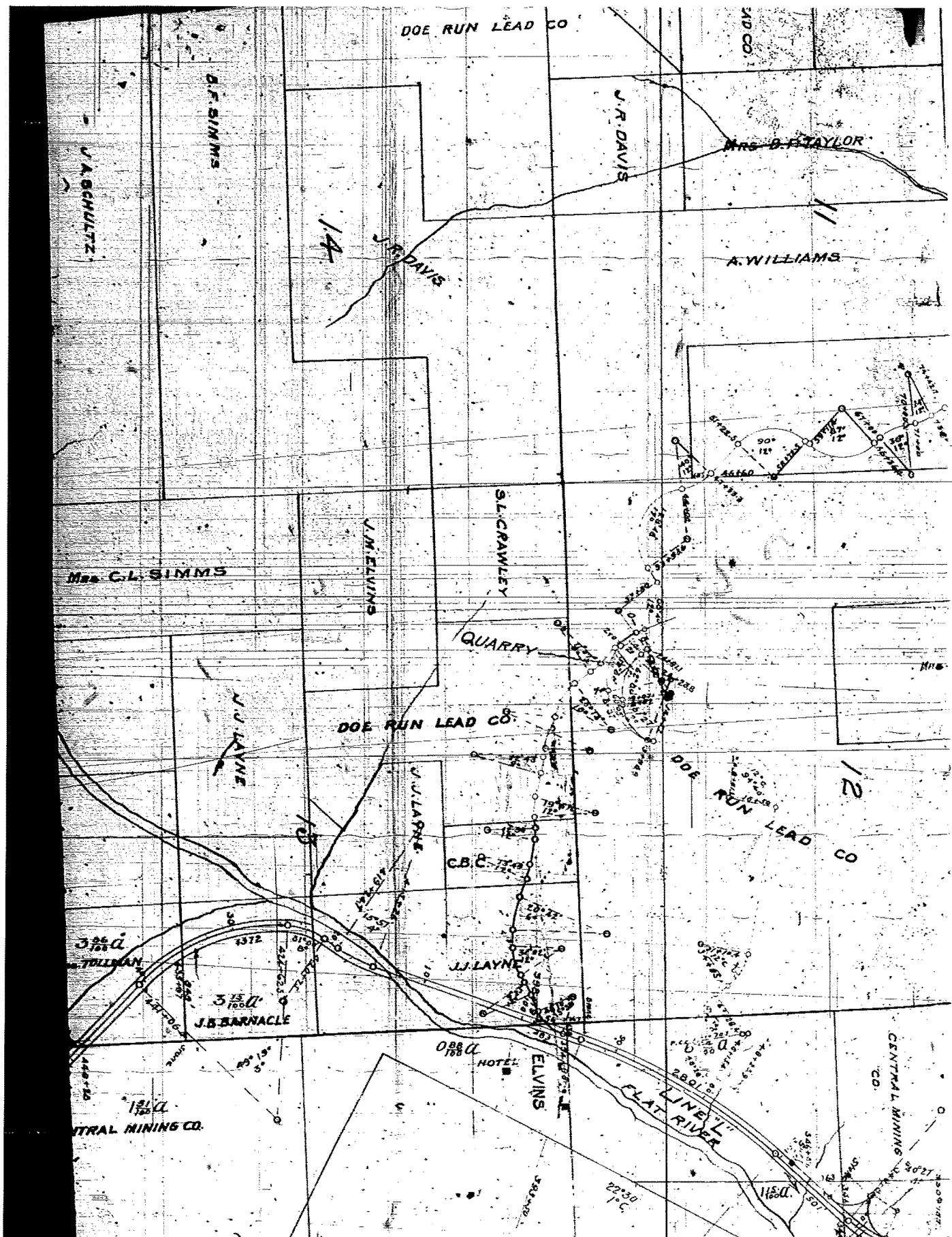
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my  
official seal, at my office in Thomasville Ga, the  
day and year first above written.

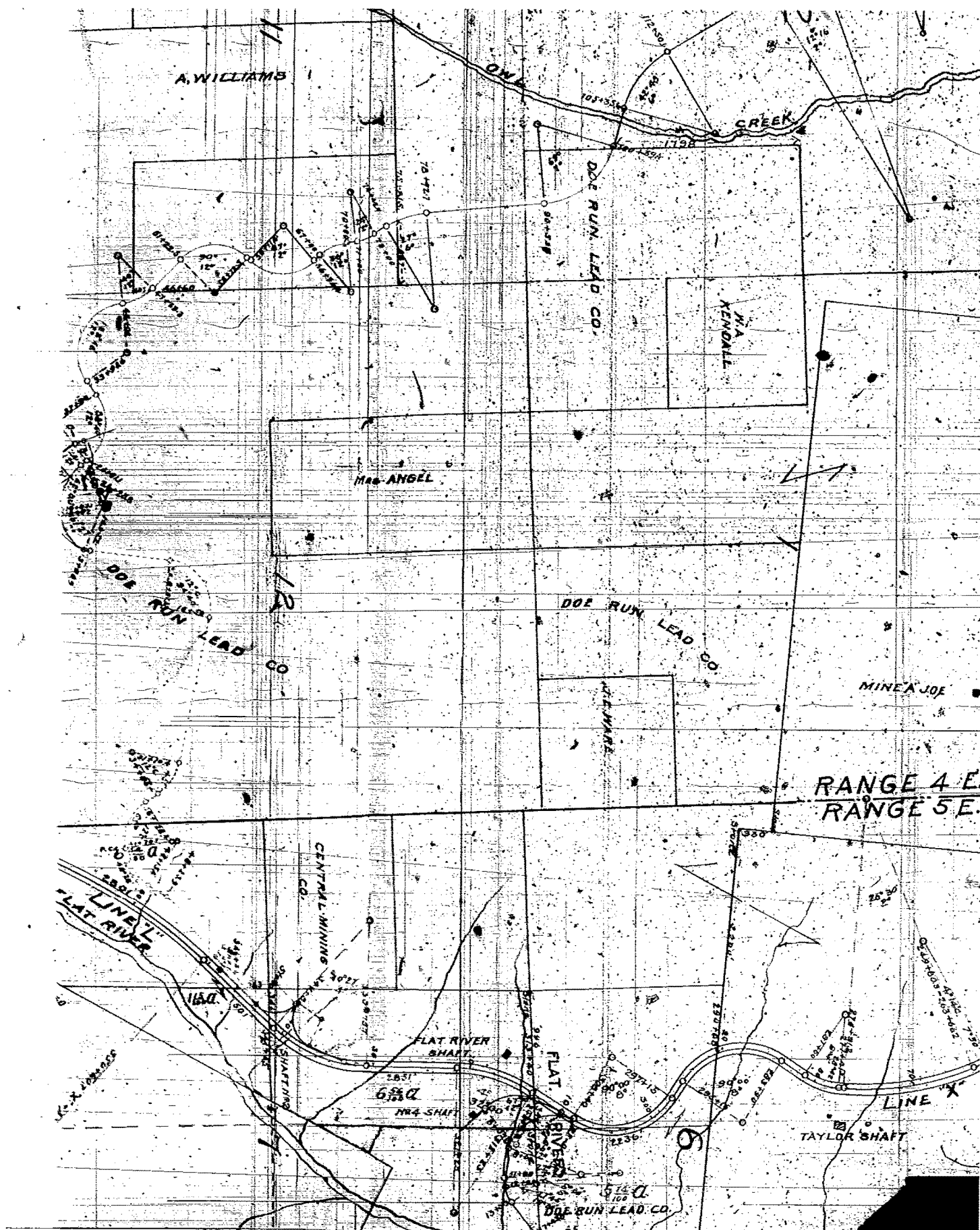
My term expires Aug 10<sup>th</sup> 1903

Thomasville Ga  
Greene  
Doe Run

UPRR-002861

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UPRR-002863

ED\_000859\_00001362-00101

2509418  
2509419

147

THIS INDENTURE, Made on the 28th day of June, 1906 by and between Doe Run Lead Company a corporation organized under the laws of the State of Missouri and having its chief office in the County of St. Francois, State of Missouri as party of the First Part and Mississippi River and Bonne Terre Railway, a railroad corporation organized under the laws of the State of Missouri, as party of the Second Part;

WITNESSETH: That the said party of the First Part in consideration of the sum of One Dollar to it paid by the said party of the Second Part, the receipt of which is hereby acknowledged, does by these presents remise, release and forever quit claim unto the said party of the Second Part the following described lots, tracts or parcels of land situate, lying and being in the County of St. Francois and State of Missouri, to-wit:

A strip of land for right-of-way One Hundred feet wide, Fifty feet each side of center of track, as now constructed, through a portion of the South-west quarter of the North-west quarter of Section 16, Township 35 North, Range 5 East extending from Station 1 plus 64 of the Survey of said Mississippi River and Bonne Terre Railway for its Turpin branch south of Doe Run Station on the Eastern boundary of a right-of-way conveyed to the Mississippi River and Bonne Terre Railway by deed from Doe Run Lead Company dated March 6, 1897 and recorded in Book 49 at page 433, to the Eastern boundary of said South-west quarter of North-west quarter at Station 8 plus 50 of said Survey.

Also a strip of land for Right-of-way One Hundred feet wide Fifty feet each side of center of track, as now constructed, through the North-east quarter of the South-west quarter of Section Sixteen, Township 35 North Range 5 East extending from Station 15 plus 91 to Station 31 plus 67 of the survey of said railroad, for its Turpin branch south of Doe Run Station.

Also a parcel of land in the North half of the North-west

UPRR-002890

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quarter of Section 16 Township 35 North, Range 5 East, Fifty feet each side of center line of "Y" track and spur to same as now built at and near Doe Run Station, together with the triangular shaped tract lying within the "Y" tracks on the East and the main track on the West.

The several parcels herein mentioned containing Nine and one-tenth acres all in St. Francois County, Missouri, reference being had to blue print map hereto attached for more definite description the parts thereon colored in red being intended to be hereby conveyed.

To Have and To Hold the same with all the rights, immunities, privileges and appurtenances thereto belonging unto the said party of the Second Part and its successors and assigns for railway purposes, forever.

IN WITNESS WHEREOF, the said party of the First Part has hereunto set its hand and seal the day and year first above written.

Attest:

R. P. Graves  
Secretary.

Doe Run Lead Company  
by Dwight S. Jones  
President.

New York  
State of Missouri ss.  
New York  
County of St. Francois

On this 9<sup>th</sup> day of July 1902 before me appeared Dwight S. Jones to me personally known who being by me duly sworn did say that he is the President of Doe Run Lead Company, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors and Dwight S. Jones acknowledged said instrument to be the free act and deed of said

corporation.

IN WITNESS WHEREOF the undersigned has hereunto set his hand and affixed his Notarial Seal the day and year last above written.

My Term of office expires

March 30<sup>th</sup> 1907

Ernest A. Dorn

Notary Public.

NOTARY PUBLIC No. \_\_\_\_\_  
KINGS COUNTY,  
CERTIFICATE FILED IN N. Y. CO.

STATE OF MISSOURI ,        )  
County of St. Francois.    ) SS.

I, J.C. Williams, Clerk of the Circuit Court and Ex-officio Recorder of Deeds within and for the County aforesaid, do certify that the instrument of writing hereto attached, with the Certificate thereon, was filed for record August 8th 1906, at 9:00 P.M., and that the same is duly recorded in said office in Book 80 at Page 541.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court/ Done at office at Farmington, this 18th day of August, 1906.

J. C. Williams

Recorder,

By Mildred Watts, Deputy.

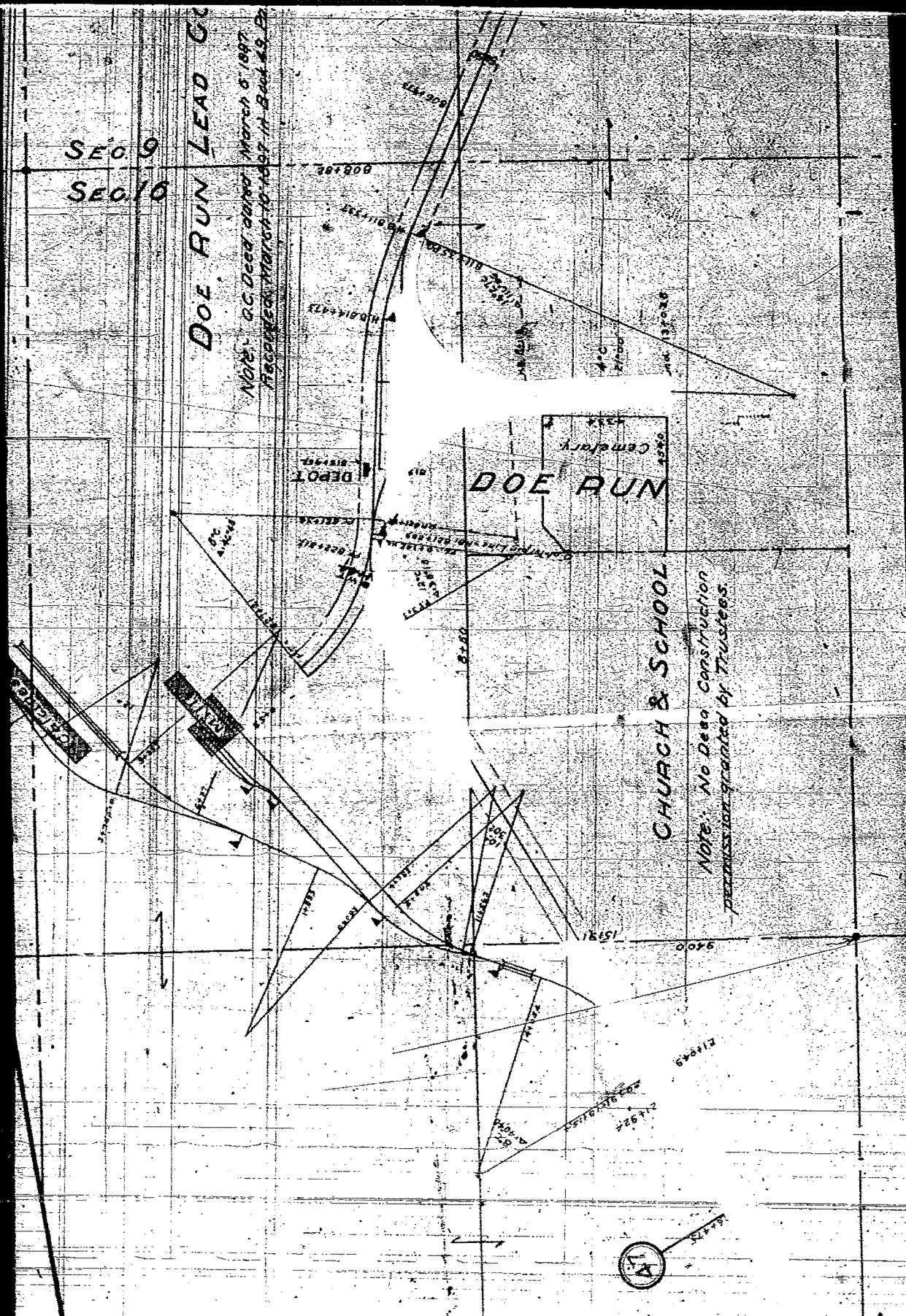
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My term of office expires  
this  
day and signed his Material Seal the day and year last above  
IN WITNESS WHEREOF the undersigned has hereunto set his  
corporate

80 - 541 +  
Filed for record  
August 8th, 1906,  
at 9.00 A. M.  
J. C. Williams,  
Recorder.  
By Mildred Watts D.R.  
Fee, \$1.00 Paid.



UPRR-002894

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## EXHIBIT 2G

~~Asst. Secy~~  
File 1075

LOR

This report will not be printed in full in the permanent series of Interstate Commerce Commission reports.

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 14897

MISSOURI-ILLINOIS RAILROAD COMPANY PURCHASE

Submitted May 24, 1945.

Decided June 7, 1945.

Purchase by the Missouri-Illinois Railroad Company of the properties, rights, and franchises of the Mississippi River & Bonne Terre Railway, approved and authorized

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS PORTER, MAHAFFIE, AND MILLER

BY DIVISION 4:

The Missouri-Illinois Railroad Company, on April 12, 1945, applied under section 5(2) of the Interstate Commerce Act, as amended, for authority to purchase the properties, rights, and franchises of the Mississippi River and Bonne Terre Railway, hereinafter called the Bonne Terre. A hearing has been held. No representations have been made by State authorities and no objection to the application has been presented.

The applicant, incorporated under the laws of Missouri on January 8, 1921, as successor to the Illinois Southern Railway Company, is controlled through ownership of 51 percent of its stock by Guy A. Thompson, trustee of the Missouri Pacific Railroad Company, debtor. It owns all the capital stock of the Bonne Terre, except directors' qualifying shares, and operates the properties of that carrier under the terms of a 99-year lease which became effective January 1, 1929. See Control of Mississippi River & B.T. Ry., 154 I.C.C.77. Our report in that proceeding sets forth the early history of the Bonne Terre, the purposes for which it was built, and other pertinent facts pertaining thereto.

When the applicant took over the properties of the Bonne Terre under the lease in question, it also acquired all the current assets of that carrier such as cash on hand, bills and accounts receivable, claims receivable, etc. Among other considerations therefor, the applicant agreed (1) to pay \$10 annually on each share of the outstanding capital stock of the Bonne Terre, other than the shares held by the applicant; (2) to maintain the properties in good condition; (3) to assume all current obligations and liabilities of the Bonne Terre existing as of the effective date of the lease; and (4) to make additions and betterments to the properties, for which the Bonne Terre agreed to reimburse the applicant.

The Bonne Terre was incorporated under the laws of Missouri on May 11, 1888, and its properties are located wholly within that State. It owns a line of railroad extending southerly from a connection with the main line of the Missouri Pacific at Riverside, a point about 25 miles south of St. Louis, Mo., to a connection with the Main line of the applicant at Derby,

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Finance Docket No. 14397 - Sheet 2.

38.79 miles; together with a branch line extending southwesterly from Hoffman Junction to Hoffman, 6.9 miles. The applicant states that the railroad properties of the Bonne Terre are in good condition for the service required of them.

The Bonne Terre has no funded indebtedness. Its outstanding unsecured indebtedness to the applicant was \$253,243 as of February 1, 1945, representing improvements which have been made by the applicant to the properties of the Bonne Terre since the effective date of the lease. Such improvements were in the nature of additions and betterments, made pursuant to the terms of the lease, above referred to. The proposal herein contemplates the purchase of all the properties, rights, and franchises of the Bonne Terre, except its right to exist as a corporation. In consideration thereof, the applicant will cancel the above-mentioned indebtedness and assume all the debts, obligations, and liabilities of the Bonne Terre. Thereupon the properties in question will be conveyed by deed to the applicant. The latter will surrender the capital stock of the Bonne Terre for cancellation and the corporate existence of that carrier will be terminated.

The value of the properties of the Bonne Terre for rate-making purposes, reported by Division 1 as of June 30, 1914, was \$3,551,550. From the effective date of the lease to December 31, 1944, additions and betterments amounted to \$251,971. From June 30, 1914 to December 31, 1944, retirements amounted to \$1,394,857, resulting in a net reduction of \$1,142,886 in the original value of the properties, above stated.

The balance sheet of the Bonne Terre, as of January 31, 1945, shows investment in road property \$1,971,301, investment in equipment \$467,759, donations and grants, credit, \$15,251, accrued depreciation on equipment, credit, \$233,005, miscellaneous physical property \$2,981, capital stock \$3,000,000, and earned surplus, deficit, \$806,215.

The proposal herein will effect no change in the operation of the railroad properties of the Bonne Terre and the status or interest of the applicant's employees will not be adversely affected. The transaction will result in no increase in the applicant's fixed charges and does not contemplate any assumption or guaranty of payment of dividends or fixed charges. No request to be included in the transaction has been made by any other railroad and it does not appear that the interests of other carriers would be adversely affected. As to the economies to be effected by the proposal, the applicant alleges that it would be relieved of the expense of maintaining the corporate entity of the Bonne Terre and the payment of its franchise taxes, amounting to about \$1,500 a year. Other benefits would be realized through elimination of the expense of separate accounting for the Bonne Terre and incidental expenses incurred by reason of the present operation under the terms of the aforementioned lease.

Our authorization and approval of the purchase will be with the express understanding that, before recording the acquisition of the properties in its books, the applicant shall submit the related journal entries for our approval.

UPRR-001505

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Finance Docket No. 14897 - Sheet 3.

We find that the purchase by the Missouri-Illinois Railroad Company of the properties, rights, and franchises of the Mississippi River and Bonne Terre Railway, as proposed herein, is within the scope of section 5(2) of the Interstate Commerce Act, as amended; that the terms and conditions of the proposed transaction are just and reasonable; and that the transaction will be consistent with the public interest. Since no change in the status or interest of carrier employees is involved, no condition as to employment is necessary. An appropriate order will be entered.

UPRR-001506

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ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 4, held at its office in Washington, D.C., on the 7th day of June, A.D. 1945.

Finance Docket No. 14897

MISSOURI-ILLINOIS RAILROAD COMPANY PURCHASE

Investigation of the matters and things involved in this proceeding having been made, a hearing having been held, and said division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That the purchase by the Missouri-Illinois Railroad Company of the properties, rights, and franchises of the Mississippi River and Bonne Terre Railway, described in the report aforesaid, upon the terms and conditions therein found just and reasonable, be, and it is hereby, approved and authorized.

And it is further ordered, That the Missouri-Illinois Railroad Company shall report to this Commission as required by valuation order No. 24, effective May 15, 1928.

By the Commission, division 4.

W. P. BARTEL

(SEAL)

Secretary.

## EXHIBIT 2H

## CONCLUSIONS

Finding that the services rendered by counsel for the trustees were reasonably necessary to the administration of the debtor-railroad's estate, we conclude that the sum of Forty thousand seven hundred and four and nine hundredths dollars (\$40,704.09) should be fixed and approved as the reasonable maximum limit of compensation to be allowed out of the debtor-railroad's estate for services rendered by the firm of Gratz, Tate, Spiegel, Ervin and Ruthrauff during the period of June 16, 1971, through June 15, 1972, of which Twenty-eight thousand five hundred and thirty-two dollars (\$28,532) has previously been approved and authorized by this Commission.

We further find that this decision is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

An appropriate order will be entered.

COMMISSIONER MACFARLAND dissents.

COMMISSIONERS DEASON and HARDIN were absent and did not participate.

COMMISSIONER O'NEAL did not participate.

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MISSOURI PAC. ABANDONMENT BET. BISMARCK AND WHITEWATER 643

FD 342

FINANCE DOCKET NO. 26353

**MISSOURI PACIFIC RAILROAD COMPANY ABANDONMENT  
BETWEEN BISMARCK AND WHITEWATER, MO.**

Certificate and order permitting abandonment by Missouri Pacific Railroad Company of a portion of its line of railroad between Bismarck and Whitewater, Mo. Conditions prescribed.

*Richard S. M. Enrich III* for applicant.

*D. Jeff Lance, Elvis A. Mooney, Robert I. Meacher, William F. Liliensiek, Melvin T. Ingram, Claude A. Relf, Ivan W. Scheihing, Robert W. Maupin, Cullen Cline, and Kenneth Shrum* for protestants.

DECISION, CERTIFICATE AND ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Review Board Number 5, held at its office in Washington, D.C., on the 16th day of August 1972.

Upon consideration of the application and the record in the above-entitled proceeding, the report and recommended certificate and order of the hearing examiner served April 14, 1972, the exceptions thereto filed separately by the Joint Committee for Transportation (JCT) and the United Transportation Union, and applicant's reply to the exceptions, including a motion to strike portions of the exceptions of JCT; and

*It appearing*, That, although excessively vigorous and inflammatory language by the parties is not to be condoned, the exceptions of JCT should be admitted in their entirety; and

*It further appearing*, That the findings and conclusions of the hearing examiner with respect to all matters of fact and law considered and disposed of in his report are in all material respects proper and correct except as hereinafter modified; that the exceptions and the motion raise no new or material issues or matters of fact or law not otherwise adequately considered and properly disposed of by the hearing examiner in his report; and that although said exceptions and motion, otherwise, are not of such nature as to require the issuance by Review Board Number 5 of a report discussing the evidence in the light of such pleadings, said report should be restated and supplemented, pursuant to the evidence of record, to the extent set forth hereinafter;

*It further appearing,* That traffic in the area has decreased materially since 1959 due to closing of mine and metal refining facilities at Fredericktown, Mo., and that traffic has diminished from 1,454 carloads originating or terminating on the involved line in 1960 to an average 497 carloads in 1969 and 1970 (less than 2 carloads per day and slightly less than 8 carloads per mile per year); that alternate rail and motor carrier service is available and all stations, except Marquand, Mo., are within approximately 20 miles of alternate rail facilities of at least one of three rail carriers (no shipper witnesses located at Marquand appeared to oppose the abandonment);

*It further appearing,* That the line incurred annual losses of \$62,713 and \$51,534 in 1969 and 1970, respectively; that said losses would have been substantially greater had applicant not employed a policy of reduced maintenance (i.e., expending only such sums as absolutely necessary to keep the line in safe operating condition); that applicant's average expenditure for maintenance of way over its entire system in 1969 was \$4,756 per mile (over 10 times the amounts spent on the involved line in that year); that normal maintenance on the line would be at least \$1,580 per track mile or \$103,000 annually (as contrasted to maintenance-of-way expenditures of \$28,342 and \$29,705 in 1969 and 1970, respectively); and that, additionally, substantial expenditures for rehabilitation will be required; and

*It further appearing,* That the Commission has an obligation to prevent improvident and unnecessary expenditures for maintenance and operation of lines not needed to insure adequate service. Cf. *Chesapeake & Ohio Ry. v. United States*, 283 U.S. 35, 42 (1931); see also *Washington & Old Dominion R. Abandonment—Virginia*, 331 I.C.C. 587, 600 (1968); that there is no foreseeable prospect of increased traffic sufficient to make future operation profitable, and that, under the circumstances, continued maintenance and rehabilitation of the line is not economically justified and would impose an undue burden upon applicant and interstate commerce;

*It further appearing,* That the involved line of railroad is located in a sparsely populated area where alternate rail and motor service is available; that the abandonment does not constitute a major Federal action that will have significant affect upon the quality of the human environment and that, accordingly, the detailed statement (and procedures incident thereto), as prescribed in our regulations concerning environmental matters (49 CFR 1100.250), are unnecessary (we note, however, that a beneficial affect may

342 I.C.C.

result from more productive use of the land area and one less branch line in an area overburdened with excess rail capacity); and

*It further appearing,* That bridge traffic was properly considered to be of little, if any, relevance since such traffic will move alternately over applicant's main line and revenues therefrom will not be lost to the system. Cf. *Chicago & N. W. Ry. Co. Trackage Rights*, 317 I.C.C. 350; that traffic at Bismarck and Whitewater was properly disregarded since both stations are outside the segment to be abandoned and revenues therefrom will similarly be retained; that adequate evidence, including photographic exhibits of protestants, was submitted with respect to condition of the line and future maintenance costs; and that the failure of applicant to grant a request of one of the protestants made 12 days prior to the hearing to travel over the line for inspection purposes, purportedly at the expense of applicant, does not constitute a denial of due process; Wherefore, and good cause appearing therefor:

*We find,* That the evidence considered in the light of the exceptions and the reply thereto does not warrant a result different from that reached by the hearing examiner, that the statement of facts, the conclusions and findings of the hearing examiner, except as herein modified being otherwise proper and correct in all material respects, should be, and they are hereby, affirmed and adopted as our own;

*It is ordered,* That the motion of applicant be, and it is hereby, denied; and

*It is further ordered,* That the recommended certificate and order of the hearing examiner, served April 14, 1972, permitting the Missouri Pacific Railroad Company to abandon its branch line of railroad extending between Bismarck and Whitewater, Mo., subject to conditions, be, and it is hereby, adopted as the certificate and order of the Commission, Review Board Number 5, effective 35 days from the date of service hereof.

The statement of facts, conclusions, and findings of Hearing Examiner Lyle C. Farmer follows:

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By application filed September 18, 1970, the Missouri Pacific Railroad Company, a common carrier by railroad subject to part I of the Interstate Commerce Act, seeks a certificate of public convenience and necessity under the provisions of section 1(18-20) of the act permitting abandonment of that portion of its line of railroad between milepost 76.36 near Bismarck, Mo., and milepost 141.98 near Whitewater, Mo., a distance of 65.62 miles of track segment together with side tracks connecting therewith, all in St. Francois, Madison, Bollinger, and Cape Girardeau Counties, Mo.

Various protests against the abandonment have been made. The matter was referred to the hearing examiner for hearing and the recommendation of an appropriate order thereon, accompanied by the reasons therefor. Hearing was held at Cape Girardeau, Mo., on May 24, 25, 26, 27, and 28, 1971. The Joint Committee for Transportation (unincorporated informal association of interested persons, officials, businesses, associations, and firms in the area served by the considered branch line of railroad), Black River Electric Cooperative, Missouri Public Service Commission, Missouri Farmers Association, Inc., city of Fredericktown, city of Marble Hill, city of Lutesville all in Missouri and Bollinger County Court, Perry Equipment Corporation, United Transport Union, and Brotherhood of Locomotive Engineers, protestants, appeared in opposition to the application for abandonment. Briefs have been filed by applicant and the Joint Committee for Transportation, Black River Electric Cooperative, Perry Equipment Corporation, and United Transport Union and have been considered herein.

The portion of track here sought to be abandoned is a part of applicant's Bismarck-Charleston Branch, approximately 65.62 miles in length, as indicated, between milepost 76.36 near Bismarck and milepost 141.98 near Whitewater. Actually the segment proposed to be abandoned ends less than a mile north of Whitewater, purportedly to serve a shipper on a spur track from Whitewater. Also on the north end of the segment the line ends eight-tenths of a mile south of Bismarck to afford use of a Y track. All points on the segment here considered are in Missouri. Originally, the Bismarck-Charleston Branch extended 16 miles beyond Charleston to Belmont to reach a car ferry on the Mississippi River. The branch was completed in 1869. Thereafter, in the 1930's the portion of track between Charleston and Belmont was authorized by this Commission to be abandoned.

An application to abandon a line segment substantially as here sought was filed March 19, 1963, and subsequently a request by applicant for dismissal thereof, after hearing, was granted on May 12, 1964.

Cattle grazing and agriculture are the main industries in the territory served by the considered branch line. Also timber products and railroad ties are produced in the area. It is estimated by applicant that the population of the area served in 38,271 persons premised on rural population average of 25.4 persons per square mile, and assuming the considered territory embraces an area 10 miles wide on each side of the line involved by 65.62 miles long, totaling 1,312 square miles. Population estimates based on 1960 censuses, also include populations of the towns on the line as indicated below. Following is a tabulation of the stations now on the line; the approximate population of each; and highway distance to lines of railroads:

<sup>1</sup>Finance Docket No. 22517 entitled the same as the instant proceeding requesting abandonment of 68.94 miles of branch line and connections and side tracks.

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MISSOURI PAC. ABANDONMENT BET. BISMARCK AND WHITEWATER 647

Station	Milepost	Population	Highway distance to nearest railroad
DeLassus, nonagency-----	86.94	250	Approximately 6 miles to Missouri-Illinois R. at Ogborn, Mo.
Knob Lick, agency (mobile)-----	94.94	150	Approximately 17 miles to Missouri-Illinois R. at Ogborn, Mo.
Fredericktown, agency-----	104.49	3,484	Approximately 21 miles to Missouri Pacific R. at Arcadia-Ironton, Mo.
Marguand, agency (mobile)-----	118.06	392	Approximately 36 miles to Missouri Pacific R. at Jackson, Mo.
Glen Allen, agency (mobile)-----	130.29	250	Approximately 22 miles to Missouri Pacific R. at Jackson, Mo.
Lutesville, agency-----	133.40	658	Approximately 19 miles to Missouri Pacific R. at Jackson, Mo.

The segment of line here sought to be abandoned does not connect with any other line of railroad for interchange of traffic. Passenger service has not been provided on the involved line for a number of years. Presently, points on the considered line segment are served by a local freight train 6 days of each week. On Monday, Wednesday, and Saturday this train operates southbound from Bismarck to Charleston and Sikeston. Tuesday, Thursday, and Saturday it is operated northbound from Sikeston through Charleston to Bismarck. Such service has been provided without material schedule change for the past 5 years.

As indicated, no passenger traffic has been handled on the line for a number of years. With respect to freight traffic moving over the line, there has not been any less-than-carload (LCL) freight tonnage during the past 4 years. Also no local traffic (traffic originating at and destined to points on the involved line segment) moved during the above period. Freight tonnage between points on the involved segment line and points beyond for the years 1967, 1968, 1969, and 1970 is disclosed as follows:

Commodity	1967		1968 <sup>1</sup>		1969		1970	
	Cars	Tons	Cars	Tons	Cars	Tons	Cars	Tons
Farm products-----	0	0	2	100	1	51	1	1
Coal-----	1	55	2	67	1	35	0	0
Nonmetallic minerals--	60	3,031	48	2,538	37	1,772	35	1,786
Food and kindred products-----	34	989	12	361	18	483	13	381
Lumber or wood products; except furniture-----	343	13,394	305	14,878	260	11,540	320	13,077
Furniture or fixtures--	1	7	0	0	0	0	0	0
Pulp, paper, or related products-----	28	915	22	709	14	443	18	681

See footnote at end of table.

## EXHIBIT 2I

MISSOURI  
Madison County

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25-061-01 Doc. 77029

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10DISCLAIMER

KNOW ALL MEN BY THESE PRESENTS:

Comes now Missouri Pacific Railroad Company, a corporation organized and existing under the laws of the State of Missouri, and does hereby make and execute this Disclaimer as follows:

WHEREAS, many years prior hereto the St. Louis & Iron Mountain Railroad Company acquired easements for railroad right-of-way purposes over and across certain strips of land located in the County of Madison, State of Missouri; and

WHEREAS, Missouri Pacific Railroad Company, a corporation, has succeeded to all of the rights and interest of the St. Louis & Iron Mountain Railroad Company; and

WHEREAS, the Missouri Pacific Railroad Company has now abandoned the railroad right-of-way commonly known as the Belmont Branch, and being that railroad right-of-way extending through the County of Madison, State of Missouri, more particularly referred to and described hereafter; and

WHEREAS, Missouri Pacific Railroad Company no longer provides railroad service in the County of Madison, State of Missouri; and

WHEREAS, Missouri Pacific Railroad Company now desires to expressly and forever disclaim all right, title and interest in and to the railroad right-of-way to which Missouri Pacific Railroad Company had, has, may have had, or may have, provided, however, that Missouri Pacific Railroad Company does not intend to disclaim any interest in land in which it has a fee simple interest on or along said Belmont Branch railroad right-of-way, but only that railroad right-of-way to which Missouri Pacific Railroad Company or its predecessor had an express or implied easement, or right-of-way grant.

NOW, THEREFORE, Missouri Pacific Railroad Company does hereby expressly abandon and disclaim any interest whatsoever in the railroad right-of-way commonly known as the Belmont Branch railroad right-of-way of the Missouri Pacific Railroad that runs and extends through United States Survey 2963, Township 34 North, Range 6 East; United States Survey 2963, Township 33 North, Range 7 East; United States Survey 3087 and United States Survey 3086, Township 33 North, Range 7 East; Section 6, Township 33 North, Range 7 East; Section 5, Township 33 North, Range 7 East; the City of Fredericktown, County of Madison, State of Missouri, a political subdivision; United States Survey 3323, Township 33 North, Range 7 East; Sections 13, 14, 24 and 25, Township 33 North, Range 7 East; Sections 30, 31 and 32, Township 33 North, Range 8 East; Sections 5, 8, 9, 16, 17, 21, 27, 28 and 34, Township 32 North, Range 8 East; United States Survey 257, Township 32 North, Range 8 East; the City of Marquand, County of Madison, State of Missouri; and Section 3, Township 31 North, Range 8 East; SPECIFICALLY EXCEPTING, HOWEVER, any land which the Missouri Pacific Railroad Company owns in fee, it being the intention of this Disclaimer to disclaim only that portion of the railroad right-of-way to which the said Missouri Pacific Railroad Company has an express or implied easement for right-of-way purposes.

Missouri Pacific Railroad Company further states and affirms that the above-described railroad right-of-way has been abandoned and the land has not since said abandonment been used nor is it intended to be used for railroad right-of-way purposes in the future, and Missouri Pacific Railroad Company does not claim or intend hereafter to claim any right, title interest or estate in and to said abandoned right-of-way, although Missouri Pacific Railroad Company in no way abandons or disclaims any fee interest it has in property or land on or along said railroad right-of-way. Fee owned property

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WHEREAS, many years prior hereto the St. Louis & Iron Mountain Railroad Company acquired easements for railroad right-of-way purposes over and across certain strips of land located in the County of Madison, State of Missouri; and

WHEREAS, Missouri Pacific Railroad Company, a corporation, has succeeded to all of the rights and interest of the St. Louis & Iron Mountain Railroad Company; and

WHEREAS, the Missouri Pacific Railroad Company has now abandoned the railroad right-of-way commonly known as the Belmont Branch, and being that railroad right-of-way extending through the County of Madison, State of Missouri, more particularly referred to and described hereafter; and

WHEREAS, Missouri Pacific Railroad Company no longer provides railroad service in the County of Madison, State of Missouri; and

WHEREAS, Missouri Pacific Railroad Company now desires to expressly and forever disclaim all right, title and interest in and to the railroad right-of-way to which Missouri Pacific Railroad Company had, has, may have had, or may have, provided, however, that Missouri Pacific Railroad Company does not intend to disclaim any interest in land in which it has a fee simple interest on or along said Belmont Branch railroad right-of-way, but only that railroad right-of-way to which Missouri Pacific Railroad Company or its predecessor had an express or implied easement, or right-of-way grant.

NOW, THEREFORE, Missouri Pacific Railroad Company does hereby expressly abandon and disclaim any interest whatsoever in the railroad right-of-way commonly known as the Belmont Branch railroad right-of-way of the Missouri Pacific Railroad that runs and extends through United States Survey 2963, Township 34 North, Range 6 East; United States Survey 2963, Township 33 North, Range 7 East; United States Survey 3087 and United States Survey 3086, Township 33 North, Range 7 East; Section 6, Township 33 North, Range 7 East; Section 5, Township 33 North, Range 7 East; the City of Fredericktown, County of Madison, State of Missouri, a political subdivision; United States Survey 3323, Township 33 North, Range 7 East; Sections 13, 14, 24 and 25, Township 33 North, Range 7 East; Sections 30, 31 and 32, Township 33 North, Range 8 East; Sections 5, 8, 9, 16, 17, 21, 27, 28 and 34, Township 32 North, Range 8 East; United States Survey 257, Township 32 North, Range 8 East; the City of Marquand, County of Madison, State of Missouri; and Section 3, Township 31 North, Range 8 East; SPECIFICALLY EXCEPTING, HOWEVER, any land which the Missouri Pacific Railroad Company owns in fee, it being the intention of this Disclaimer to disclaim only that portion of the railroad right-of-way to which the said Missouri Pacific Railroad Company has an express or implied easement for right-of-way purposes.

Missouri Pacific Railroad Company further states and affirms that the above-described railroad right-of-way has been abandoned and the land has not since said abandonment been used nor is it intended to be used for railroad right-of-way purposes in the future, and Missouri Pacific Railroad Company does not claim or intend hereafter to claim any right, title interest or estate in and to said abandoned right-of-way, although Missouri Pacific Railroad Company in no way abandons or disclaims any fee interest it has in property or land on or along said railroad right-of-way. Fee owned property

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specifically excluded from this disclaimer includes, by way of clarification but without limiting the generality of excluded and fee property by specific description, the following described tracts or parcels of land:

TRACT NO. 1

A tract or parcel of land located in the City of Fredericktown, Madison County, Missouri, bounded generally by Loughboro, Allen, Morley, Villar and Collier Streets and Mine La Motte Avenue, all being more particularly described as follows:

BEGINNING at the point of intersection of the centerline of Missouri Pacific Railroad Company's former main track, as located and constructed, with a southwestwardly extension of the southeasterly line of Mine La Motte Avenue, said point being at approximate ECS 5520 + 15 of said former main track centerline; thence southwestwardly, along said extension of the southeasterly line of Mine La Motte Avenue, to a point 75.0 feet southwestwardly, as measured normal, from the centerline of said former main track; thence northwestwardly, concentric and parallel with said centerline, to a point in the east line of Lot 6, Block 2 of E. W. Sniders Addition to said City of Fredericktown; thence northwardly, along said east line of said Lot 6, and a northwardly extension thereof, to a point 50.0 feet southwestwardly, as measured at right angles, from the centerline of said former main track; thence northeastwardly, at right angles to said centerline, 50.0 feet to a point on said centerline; thence northwestwardly, along said centerline, approximately 156 feet to its intersection with a southwestwardly extension of the northerly line of the first tract of land described in deed from Louis J. Villars, et al., to The St. Louis and Iron Mountain Railroad Company, dated June 10, 1869, of record in Book L, Page 517 of the Madison County, Missouri Deed Records; thence northeastwardly, along said extension, and along the northerly line of said tract of land, 75.0 feet to a point for corner, same being in the southwesterly line of Allen Street; thence southeastwardly, along said southwesterly line of Allen Street to its intersection with the southerly line of Morley Street; thence along the southerly line of Morley Street to its intersection with the westerly line of Villar Street; thence southeastwardly, along said westerly line of Villar Street to a point located 50.0 feet northeastwardly, as measured normal, from the centerline of Missouri Pacific Railroad Company's former main track, as located and constructed; thence southwestwardly, normal to said centerline, 50.0 feet to a point on said centerline; thence southeastwardly, along said centerline, to the point of beginning.

TRACT NO. 2

A tract or parcel of land in the City of Fredericktown, Madison County, Missouri, located approximately 10 feet west and 1150 feet south of the intersection of the westerly line of North Main Street with the southerly

line of Murta Street, all as measured along said westerly line of North Main Street, said tract or parcel of land measuring 20 feet square, and being the property conveyed to Missouri Pacific Railroad Company's predecessor in title by deed from Andrew J. Teal, recorded in Book M, Page 594 of the Madison County, Missouri Deed Records.

TRACT NO. 3

A tract or parcel of land located in the Town of Marquand, Madison County, Missouri, more particularly described as follows:

BEGINNING at the northeasterly corner of Lot 13, Block 15 of the Original Town of Marquand, Missouri, same being in the southerly line of Murta Street; thence northeastwardly, along the southerly line of Murta Street, 156 feet, more or less, to a point 100.0 feet southwestwardly, as measured at right angles, from the centerline of Missouri Pacific Railroad Company's former main track, as located and constructed, said point being in the northeasterly line of Harding Street; thence northwestwardly, parallel with the centerline of said former main track, along said line of Harding Street, approximately 1765 feet to a point in the northerly corporate limits line of said Town of Marquand, as the same existed in the year 1919; thence northeastwardly, along said corporate limits line, crossing said former main track centerline at EGS 6222 + 75, and continuing to a point 100.0 feet northeastwardly, as measured at right angles, from said centerline, said point being in the southwesterly line of Whitener Street; thence southeastwardly, parallel with the centerline of said former main track, along said line of Whitener Street, approximately 1,822 feet to a point in the centerline of Whitener's Creek; thence southwestwardly, along the centerline of said Whitener's Creek, to a point on the centerline of Missouri Pacific Railroad Company's said former main track; thence southeastwardly, along said former main track centerline, 1175 feet, more or less, to EGS 6252 + 79 on said centerline; thence southwestwardly, at right angles to said centerline, 75.0 feet; thence northwestwardly, parallel with said centerline, 1135 feet, more or less, to a point in the centerline of Whitener's Creek; thence southwestwardly, along the meanders of the centerline of Whitener's Creek, to a point in the northerly line of Axtell Street; thence southwestwardly, along said northerly line of Axtell Street, 875 feet, more or less, to a point in the centerline of Castor River; thence in a general northerly direction, along the meanders of the centerline of Castor River, to the intersection of said centerline with a southwesterly extension of southerly line of Pinckney Street, said intersection being, also, a point on a northwesterly extension of the southwesterly line of Fleming Street; thence southeastwardly, along said northwesterly extension of the southwesterly line of Fleming Street, 860 feet, more or less, to a point on a southwesterly extension of the northerly line of the 16 foot wide east-west alley in aforesaid Block 15 of the Original Town of Marquand; thence northeastwardly, along said extension and along said northerly line of the 16 foot wide east-west alley in said Block 15, a

distance of 276 feet, more or less, to the southeasterly corner of aforesaid Lot 13 of said Block 15; thence northwestwardly, along the northeasterly line of said Lot 13, 140 feet, more or less, to the point of beginning.

This instrument shall be spread upon the Land Records of the County of Madison, State of Missouri.

IN WITNESS WHEREOF, Missouri Pacific Railroad Company has caused this instrument to be executed by its duly authorized officers thereunto this 11th day of October, 1977.

ATTEST:

MISSOURI PACIFIC RAILROAD COMPANY

By H. J. Keese  
Asst. Secretary

By D. L. Manion  
Vice President

STATE OF MISSOURI }  
CITY OF ST. LOUIS } SS

On this 11th day of October, 1977, before me personally appeared D. L. Manion, to me personally known, who, being by me duly sworn, did say that he is the Vice President of Missouri Pacific Railroad Company, a corporation of the State of Missouri, and that the seal affixed to the foregoing instrument is the corporate seal of said Corporation, and that said instrument was signed and sealed in behalf of said Corporation by authority of its Board of Directors, and the said Vice President acknowledged said instrument to be the free act and deed of said corporation.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal at my office in St. Louis, Mo the day and year first above written.

T. P. Schmitt  
Notary Public T. P. SCHMITT  
Notary Public, County of St. Louis, Missouri

My Commission Expires:

My Commission Expires May 10, 1978

Commissioned within and for the County of St. Louis, Missouri which adjoins the City of St. Louis, Missouri, where this act was performed.

Recorded:  
Oct. 20, 1977  
Book 155  
Page 12-15  
Madison Co, Mo.

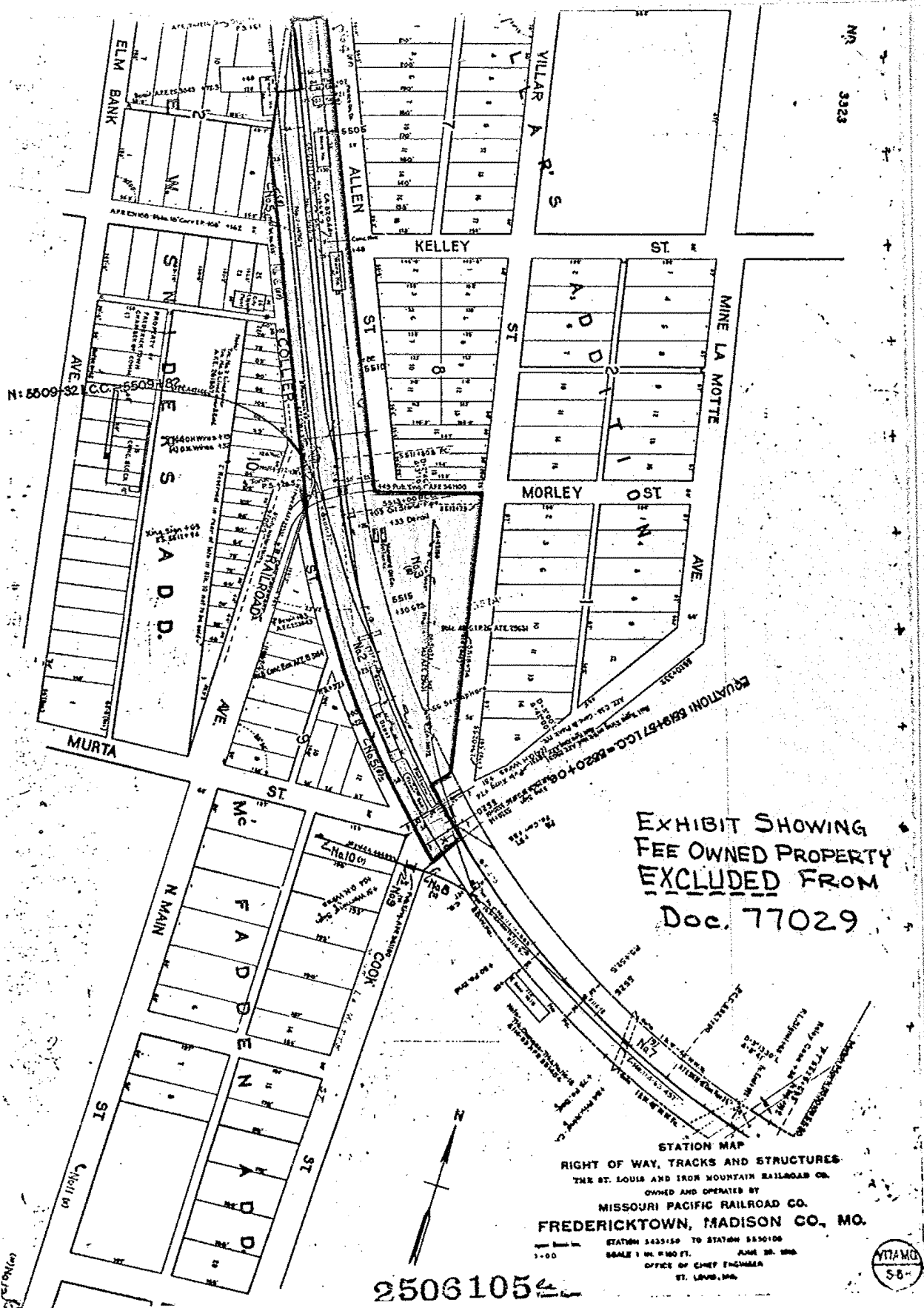
FORM APPROVED

[Signature]  
Attorney

Description approved

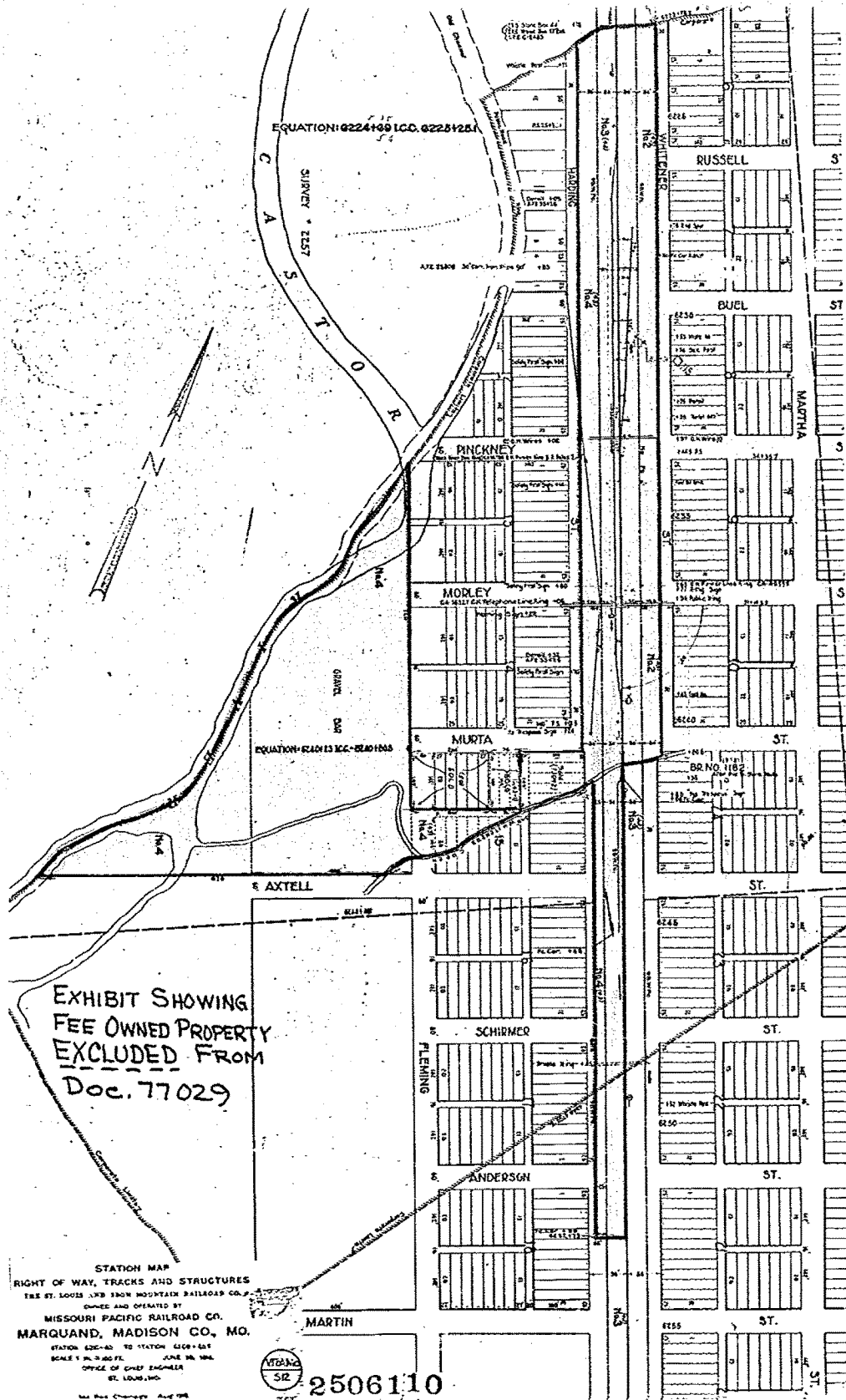
C. D. Parrish  
Asst. Manager-Land

UPRR-002810



UPRR-002811





UPRR-002812

ED\_000859\_00001362-00123

## EXHIBIT 2J

MADISON COUNTY TAX RECEIPT

2013 PARCEL NUMBER: 00-0.0-00-08 - -

*Fredericktown*

**PAID**

DATE: 12/19/2013 BATCH: 2013000075

RECEIPT#: 2013003441

*Non-clearance of  
check VOIDS receipt.*

<u>TAX DISTRICT</u>	<u>TAX</u>
Ambulance	6.81
County	4.29
Fredericktown City	17.24
Fredericktown City Parks & Rec	2.99
Health	2.27
Library	2.27
MAC College	10.79
R1 School - Fredericktown	88.53
Road & Bridge	6.50
State	0.68
Surtax	29.74
Workshop	4.41
<b>TOTAL TAXES</b>	<b>176.52</b>
<b>TOTAL PAID</b>	<b>176.52</b>

UNION PACIFIC  
PROPERTY TAX  
1400 DOUGLAS STOP 1640  
OMAHA, NE 68179-1640

DEBBY BOONE, COLLECTOR  
MADISON COUNTY COLLECTOR  
#1 COURTHOUSE SQUARE  
FREDERICKTOWN, MO 63645  
PHONE: 573-783-6544 EXT 4

UPRR-002021

ED\_000859\_00001362-00125

Tax Year

Case

Comparison Case(s)

Details

Ledger Items

Assessments

Bills

Authorities

History

Attachments

Parcel Number 01

Description 01 (Madison)

Parcel ID 2250

Company (Prop Tax) Union Pacific Railroad Company

Parcel Type Property Account

Land Acres

Long Description

Improve Sq Ft

Legal Description Parcel of land approx. 20' x 20'; located approx. as follows: Measure Sly along W line N Main St. from its intersection with S line of Marta St. 1152'; then W at rt angles to said St. 8' to pt of beginning; then continue Wly 20'; the Nly 20' to

Mineral Acres

Asset ID(s)

Grantor

Notes

Retired Date 00/00/0000

State Missouri

Tax District Code 2250

Is District 1-to-1 Yes

County Madison County, MO

Type Code &lt; None &gt;

Use Composites No

Tax District

Assessor &lt; None &gt;

Address Line 1

City

X Coordinate

Address Line 2

Zip Code

Y Coordinate

Company Grid No

State Grid No

Length

Width

CO Include Miles

Flex 4

Flex 5

Flex 6

Flex 7

Flex 8

Flex 9

Flex 10

County ID No FREDERICKTOWN

County ID No Alt 1

County ID No Alt 2

County ID No Alt 3

County ID No Alt 4

Appraisal Firm

Abstract Number

Property Use

Lot

Block

Survey

Flex 22

Flex 23

Asset Location

Geography Type

Value

Adjustment

Adj %

1 of 1

UPRR002022

## EXHIBIT 2K



*Compliments of*  
POOR, WHITE & GREENOUGH,  
New York.

POOR'S  
MANUAL  
OF  
RAILROADS.  
—  
1884.

UPRR-002088

ED\_000859\_00001362-00128



*General Balance Sheet, December 31, 1883.*

Construction and Equipment.....	\$39,950,939 11	Capital Stock.....	\$29,962,125 00
Stocks and Bonds.....	22,324,316 02	Funded Debt.....	26,895,000 00
Materials and Fuel.....	1,185,717 92	Interest Due and Accrued.....	496,433 32
Due from Agents and Others.....	731,661 18	Sundry Accounts.....	2,33,562 54
Cash on Hand.....	779,050 02	Profit and Loss.....	5,064,563 39
Total Assets.....	\$64,971,684 25	Total Liabilities.....	\$64,971,684 25

**LACLEDE AND CREVE CŒUR LAKE RAILWAY.**—Laclede Junction to Creve Cœur Lake, Mo., 12 miles—total track, 14.25 miles. Chartered September 26, 1880; road opened July 4, 1881. Operated by Missouri Pacific Ry. Co. Capital stock, \$230,000; other liabilities, \$54,000—total, representing cost of road, \$284,000. A. A. SHEDD, *President*; O. B. Shedd, *Treasurer*, Chicago, Ill.

**Directors** Mo. Pac. Ry. Co. (elected March 11, 1884).—Jay Gould, Russell Sage, Sidney Dillon, Thomas T. Eckert, George J. Forrest, George J. Gould, A. L. Hopkins, H. G. Marquand, Samuel Sloan, New York, N. Y.; F. L. Ames, Boston, Mass.; S. H. H. Clark, Omaha, Neb.; R. S. Hayes, Joseph S. Lowery, St. Louis, Mo.

JAY GOULD, *President*.....New York, N. Y.

R. S. Hayes, *1st Vice-President*.....St. Louis, Mo.

A. L. Hopkins, *2d Vice-President*.....New York, N. Y.

H. M. Hoxie, *3d Vice-President*.....St. Louis, Mo.

D. S. H. Smith, *5th Vice-President & Local Treasurer*. " " "

<i>Sec. and Treas.</i> —A. H. Calef.....New York, N. Y.	<i>Gen. Tkt. Agt.</i> —F. Chandler.....St. Louis, Mo.
<i>Asst. Secretary</i> —D. S. H. Smith.....St. Louis, Mo.	<i>Gen. Pass. Agt.</i> ....." "
<i>Gen. Transp. Mgr.</i> —A. A. Talmage....." "	<i>Gen. Traffic Mgr.</i> —Geo. Olds....." "
<i>Superintendent</i> —A. M. Hager....." "	<i>Supt. Machinery</i> —J. Hewitt....." "
<i>Mast. of Transp.</i> —D. Brock....." "	<i>Paymaster</i> —J. W. King....." "
<i>Gen. Solicitor</i> —J. C. Brown....." "	<i>Purchasing Agt.</i> —R. B. Lyle....." "
<i>Gen. Attorney</i> —T. J. Portis....." "	<i>Supt. Telegraph</i> —O. W. Hammond.....Sedalia, "
<i>Local Treas.</i> —D. S. H. Smith....." "	<i>Supt. of Car Shops</i> —John Hodge.....St. Louis, "
<i>Gen. Auditor</i> —C. G. Warner....." "	<i>Road Master</i> —P. Rockwell.....Sedalia, "
<i>Superintendent of Bridges</i> —R. M. Peck.....Pacific, Mo.	

*Missouri Division.*

*Superintendent*—A. M. Hager.....St. Louis, Mo.  
*Spt. Atch. Sec. W. Div.*—W. W. Fagan.....Atch'n, Kan.

*Central Branch Division.*

*Superintendent*—W. W. Fagan.....Atchison, Kan.  
*Asst. Gen. Fgt. Agt.*—L. A. Emerson....." "

*Iron Mountain Division.*

*Superintendent*—Wm. Kerrigan.....St. Louis, Mo.  
*Asst. Gen. Fgt. Agt.*—J. J. Rogers....." "

*Kan. and Texas Division.*

*Superintendent*—J. B. Van Dyne.....Sedalia, Mo.  
*Asst. Supt. Trans.*—T. G. Golden.....Denison, Texas.  
*Div. Fgt. Agt.*—O. V. Lewis.....Parsons, Kan.

*International and Grt. N. Division.*

*Superintendent*—J. Herrin.....Palestine, Tex.  
*Gen. Fgt. Agt.*—W. H. Newman.....Galveston, "

*Texas and Pacific Division.*

*Supt.*—Wardner Cumming.....Marshall, Tex.  
*Gen. Fgt. Agt.*—W. H. Newman.....Galveston, "

**PRINCIPAL OFFICE AND ADDRESS**.....St. Louis, Mo.

**Transfer Office**.....New York, N. Y.

**ST. JOSEPH AND DESLOGE RAILWAY.**

**Line of Road.**—Bonne Terre, Mo., to Summit, Mo.....13 miles.  
**Sidings**, 2 miles. Gauge, 3 ft. Rail (steel, 1 mile), 40 lbs.

Opened January 1, 1880. This is not an incorporated company, and does not do business as a corporation. The road is owned and operated by the St. Joe and Des Loge Lead Co., by which it was built. There is no bonded or other debt upon it. It has no officers, but is operated by a superintendent appointed by the above company. Real estate and buildings, \$5,000. Cost of road and rolling stock, \$150,000.

**Rolling Stock.**—Locomotive engines, 4. Cars—passenger, 1; baggage, etc., 1; freight (box, 3; platform, 20; coal, 31), 54—total, 58.

**Operations for 1883.**—Trains run, 85,000 miles. Earnings, etc., not reported.

T. T. ONDERDONE, *Superintendent*.....Bonne Terre, Mo.

**PRINCIPAL OFFICE AND ADDRESS**.....Bonne Terre, Mo.

UPRR-002092

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## EXHIBIT 2L



POOR'S  
MANUAL  
OF  
RAILROADS  
—  
1911

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BLAIR & CO.,  
DOMESTIC AND FOREIGN BANKERS,  
24 BROAD STREET,  
NEW YORK.

TRAVELERS LETTERS OF CREDIT.



NDA.

POOR'S MANUAL—ADDENDA.

2683

RY. (also page 1409).—This com-  
0 6 p. c. equipment gold notes,  
May 15, 1911, maturing \$50,000  
t to call on any interest date on  
Toronto, Ont., trustee. Series A  
eries B notes will be dated Aug.  
ged.

RY.—Revised list of directors  
ierce, H. C. Beatty, Wm. Notting-  
Y.; F. W. Roebbling, Jr., Trenton,  
d, Toronto, Can.

mon stock, \$2,500,000; preferred  
ge, \$2,000; accrued interest on  
ualties and insurance reserve,  
a: Cost of road and equipment,  
ts receivable, \$490; cash, \$224.

ual that this road is operated as  
system, as stated on page 2247,  
e, printed on page 2247, that this  
was stricken out.

ne 15, 1911, the authorized capti-  
0,000, the new stock to be addi-

Capital stock authorized, \$1,500,  
vanston, Oak Park, Forest Park,  
s.  
re, Allan C. McIlvaine. Officers:  
J. Werner, Treas. General Office,

Corrected statement of securities

is owned and deposited with the  
for the collateral trust bonds of

Stocks.	Bonds.	Total
\$1,805,500	\$1,799,000	\$3,604,500
499,500	500,000	999,500
3,824,300	3,834,000	7,658,300
733,000	750,000	1,483,000
\$6,862,300	\$6,883,000	\$13,745,300

issues of bonds of this company,  
Co. bonds and all stock, except  
Co., 250 shares of the East St.  
ary to qualify directors.

ight and Power Co. 1st mtg. 5  
June and December, at office of  
upon bonds, \$1,000 each, register-  
erest by endorsement of East St.  
erest, at any date on thirty days'  
l bonds are issuable only for 30  
the property, and then only when  
and one-half times the interest  
it to be issued.

CO.—Line projected: Nelsonville  
le to end of track, 6.0 miles.

Capital Stock.—Authorized, \$900,000, increased from \$300,000 by vote of stock-  
holders, May 25, 1911.

Funded Debt.—Stockholders on May 25, 1911, voted to make "a new mortgage  
to the Columbus Savings & Trust Co., as trustee, to secure an issue of \$600,000  
25-yr. 5 p. c. bonds to provide for the retirement of the outstanding \$200,000 6 p. c.  
bonds dated November 1, 1910."

JOLIET AND SOUTHERN TRACTION CO.—Bondholders' committee organ-  
ized under the receivership proceedings consists of Joy Morton, J. R. Chapman, E.  
L. Stuart, Chicago, Ill.; Robert Kelley, C. E. Wilson, Joliet, Ill.; T. B. Stuart, Aurora,  
Ill.; F. Kohlhoger, Frankfort, Ill.

LEAD BELT RY. CO.—Length of line owned, 7.69 m.; yard tracks and sid-  
ings, 4.62 m.—total, 12.31 miles.

History.—Chartered Aug. 8, 1898, under the laws of Missouri.

Capital Stock.—\$7,000.

Officers.—S. W. Eccles, Pres.; F. R. Foraker, Sec., New York, N. Y.

LEWISTON, AUGUSTA AND WATERVILLE STREET RY. CO. (see page  
2066).—The company, in the proof of its statement printed on page 2066, struck out  
the sentence: "Company also acquired \$152,500 of the \$225,000 outstanding bonds  
of the Portland and Brunswick Ry. and assumed control of that company on April  
1, 1911." The \$85,000 Lewiston and Auburn Horse RR. 1st mtg. 5 p. c. bonds were  
paid off at maturity, June 1, 1911, and a like amount of Lewiston, Brunswick and  
Bath St. Ry. 1st mtg. bonds were issued for this redemption, increasing the out-  
standing amount to \$830,000.

MANHATTAN BRIDGE THREE CENT FARE LINE.—This company pro-  
poses to build a line of about 5.0 miles in length between the Long Island Railroad ter-  
minal at Flatbush Avenue, Brooklyn, across the Manhattan Bridge, through  
Canal Street, New York City, to the Hudson River. In June, 1911, the company  
applied to the Public Service Commission of the First District of New York for  
permission to issue its common capital stock to the amount of \$50,000. The  
petition stated that the company has authorized capital stock of \$50,000, of  
which none has been issued, that the company has no bonded or mortgage in-  
debtedness, no road, plant, system or equipment, and none of its stock is held by  
other corporations.

Directors.—John C. Brackenridge, New York, N. Y.; Walter Hammitt,  
Edward Norwill, Almet R. Latson, Charles Jerome Edwards, Charles E. Perkins,  
Thomas P. Peters, Norton B. Smith, Simon J. Harding, John H. Mowler, William  
F. Neu, Frank H. Tyler, Frederick W. Wurster, Brooklyn, N. Y.

MEDIA, GLEN RIDDLE AND ROCKDALE ELECTRIC STREET RY.—  
Length of track, 4.9 miles.

History.—Chartered April 9, 1901; road opened, 1902-03. Formerly  
operated by the Delaware County and Philadelphia Electric Ry. Co., now oper-  
ated through lease dated July 1, 1910, by Southern Pennsylvania Traction Co.,  
(for which see page 1929). Annual rental, \$5,000.

Balance Sheet, June 30, 1910.—Capital stock, \$82,000; current liabilities,  
\$7,819—total, \$89,819. Contra: Cost of road, \$79,907; cash and current assets,  
\$9,912—total, \$89,819.

Capital Stock.—\$82,000. Shares, \$50. All owned by the United Power and  
Transportation Co.

Officers.—John A. Rigg, Pres.; T. W. Grookett, Jr., Sec. & Treas., Philadel-  
phia, Pa. Office, Clifton Heights, Del. Co., Philadelphia, Pa.

NEW ORLEANS, SOUTHERN AND GRAND ISLE RY.—Algiers to Buras,  
La., 59.71 miles. Sidings, etc., 6.06 miles. Gauge, 4 ft. 8½ in. Rail (steel),  
60 and 80 lbs.

History.—Chartered Feb. 1, 1911, under the laws of Louisiana as successor  
to the New Orleans, Fort Jackson and Grand Isle RR. (see Manual for 1910,  
page 662). Began operations April 12, 1911.

UPRR-002045

ED\_000859\_00001362-00132

# EXHIBIT 3

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI**

**ASARCO LLC,**

Plaintiff,

**NL INDUSTRIES, INC., et al.,**

Defendants.

)  
)  
)  
)  
)  
)  
)  
)

Case No. 4:11-cv-00864 JAR

**DECLARATION OF BRIAN G. HANSEN IN SUPPORT OF  
DEFENDANT UNION PACIFIC RAILROAD COMPANY'S  
RESPONSE TO ASARCO LLC'S LONE PINE BRIEF**

I, Brian G. Hansen, P.E., P.G., pursuant to the provisions of 28 U.S.C. § 1746, certify as follows:

1. My name is Brian G. Hansen. I am over 21 years of age. I am of sound mind and capable of making this declaration. I have personal knowledge of the facts recited in this declaration. I submit this declaration in support of Defendant Union Pacific Railroad Company's ("Union Pacific") Response to Asarco LLC's *Lone Pine* Brief.

2. I am a geological engineer with over 25 years of professional experience with mining and metals refining sites, subsurface investigations, waste disposal, Superfund, hazardous waste site investigation, and remediation.

3. I hold a Bachelor of Science degree in Geology from Fort Lewis College (Durango, Colorado) and a Master of Engineering, Geological Engineer degree from the Colorado School of Mines (Golden, Colorado). My graduate curriculum emphasized hydrogeology and groundwater contamination fate and transport.

4. My professional career has focused on the investigation and remediation of mining and minerals processing sites and the fate and transport of metals in the environment. I am a registered Professional Engineer and a registered Professional Geologist. I am a Senior Geological Engineer and partner with Formation Environmental, LLC, an environmental and consulting firm located at 2500 55<sup>th</sup> Street, Suite 200, Boulder, Colorado, 80301.

5. I have been retained by Union Pacific as an expert witness in this matter. In connection with this matter, I prepared my expert report dated March 21, 2014. Attached to my Declaration as Exhibit 3A is a true and correct copy of my report.

6. My expert report addressed certain observations made by Mr. Paul Rosasco as presented in his report dated January 27, 2014 and an addendum to that report.

7. I also have reviewed Mr. Rosasco's Declaration dated May 13, 2014 and provided in connection with Asarco's Brief on CERCLA Liability of Union Pacific Railroad Co. Nothing in Mr. Rosasco's Declaration changes the determinations provided in my expert report.

8. At Union Pacific's request, I calculated the below listed distances of the NewFields sample locations to the nearest chat pile:

- a. HRR-01 is 1.11 miles from the Leadwood Tailings Pile;
- b. HRR-02 is 0.65 miles from the Desloge/Big River Tailings Pile;
- c. HRR-03 is 0.25 miles from the Desloge/Big River Tailings Pile;
- d. HRR-04 is 1.19 miles from the Desloge/Big River Tailings Pile;
- e. HRR-05 is 1.49 miles from the Desloge/Big River Tailings Pile;
- f. HRR-06 is 0 miles from the National Tailings Pile;
- g. HRR-08 is 1.01 miles from the Federal Tailings Pile;

- h. HRR-09 is 2.07 miles from the Doe Run Tailings Pile;
- i. HRR-10 is 0.73 miles from the Leadwood Tailings Pile;
- j. HRR-11 is 1.1 miles from the Elvins Tailings Pile;
- k. HRR-12 is 0.24 miles from the Elvins Tailings Pile;
- l. HRR-13 is 0.45 miles from the Federal Tailings Pile; and
- m. HRR-14 is 0.07 miles from the Bonne Terre Tailings Pile.

9. I calculated the distance of the rail lines known as the DeSoto Subdivision and Belmont Branch from the Desloge/Big River Tailings Pile and from the Federal Tailings Pile. At its closest points, the DeSoto Subdivision is 6.7 miles from each pile. At its closest point, the Belmont Branch is 1.7 miles from the Federal Tailings Pile. I calculated the distance of the rail line known as the Ste. Genevieve line to the nearest tailings piles in St. Francois County, the Elvins Tailings Pile, the National Tailings Pile, and the Federal Tailings Pile. At its closest point, the Ste. Genevieve is 0.25 miles from the National Tailings Pile and 0.5 miles from the Federal Tailings pile.

10. Lastly, I calculated the distance from the DeSoto Subdivision to the former Asarco-owned mines in Reynolds County. At its closest point, the DeSoto Subdivision is 23 miles from the West Fork Mine and 24 miles from the Sweetwater Mine.

11. Also at Union Pacific's request, at my direction Formation prepared three maps in support of the Response to Asarco's *Lone Pine* Brief: Ex. 3B, Active Rail Line Map; Ex. 3C, NewFields Sample Locations Map; and Ex. 3D Proximity of NewFields Samples to Tailings Piles Map. To the best of my knowledge, these maps accurately represent the rail lines and other features depicted. A true and correct copy of each map is attached as an exhibit.

12. The samples Asarco obtained, purportedly of railroad ballast, were subjected to Synthetic Precipitation Leaching Procedure (“SPLP”) testing. SPLP leachate data merely provide information on the relative potential for leaching; test values are not an appropriate point of comparison for risk-based comparisons because a release would need to reach a water body in sufficient quantity to create an exceedance of the risk-based criteria.

13. Any SPLP result must be evaluated in the context of the environmental setting. For example, although the laboratory SPLP results would be the same for material from a small deposit of chat and a several hundred thousand cubic yard chat pile, the potential impact to the environment for these two settings is vastly different. As one would expect, a small deposit of chat is inconsequential and indiscernible with regard to water quality impacts.

14. For SPLP test results to translate to a measurable impact to the environment, there must be both a substantial and consolidated location of mass for the solid material being leached and a correspondingly large volume of leachate being transported directly to surface and/or groundwater. For these reasons, tailings impoundments and large chat piles have been the focus of the United States Environmental Protection Agency (“EPA”) and its Remedial Investigation/Feasibility Study (“RI/FS”) activities at SEMO. The scale of these mining features is large enough to produce releases of contaminants of concern (“COCs”), primarily lead, zinc, and cadmium, to infiltration/seepage transport pathways that are of a magnitude that causes measurable impacts on surface water and groundwater. For example, the National Tailings pile is reportedly 200 feet high and 2,500 feet across and contains several million cubic yards of mine waste. In contrast, the alleged small discrete areas of historically placed chat within a railroad right-of-way (“RRROW”), to the extent they exist, are not a focus for EPA, because of what would be the small volume of chat on the narrow strip of a railroad bed. Locally, the incident

precipitation in contact with the chat deposits hypothesized by Asarco (ranging from several inches to several feet in thickness within the narrow footprint of the rail bed [e.g., <20 feet wide]) would provide little potential for a release of a measurable mass of COCs. Furthermore, any release of COCs from chat in such an isolated rail bed setting would be further mitigated by natural attenuation and dilution, to the extent that such a release would not be measurable in the environment. EPA considers site-specific information such as dilution when interpreting leachate results (USEPA, 1996. Soil Screening Guidance: Technical Background Document, EPA/540/R-95/128, July 1996).

15. The same logic applies to the isolated areas of RRROW stream crossings. First, the RRROW in St. Francois and Madison counties typically crossed streams with some type of bridge structure. At these locations, the amount of chat in a RRROW, hypothetically in potential contact with the stream, would be very small. Mass contributions from any mine waste within the rail bed at the crossing would be limited to the waste materials present within the narrow width of the rail bed. Any dissolved or solid phase mass loading contributions from this limited area/volume of chat would not be discernible in the stream environment.

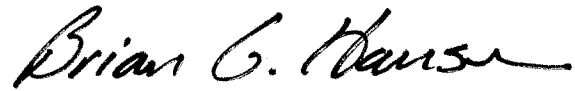
16. ASARCO has provided no reliable evidence of chat within the RRROW owned or operated by Union Pacific or its predecessors in the SEMO Sites area. Further, ASARCO has provided no evidence identifying or describing how a relatively small mass of mine waste per unit surface area within the very narrow RRROW strip would translate into measurable impacts to surface water or groundwater.

17. Correspondingly, Asarco has provided no evidence that any funds have been expended or are planned to be expended on RRROW remediation in any of the SEMO Sites.



I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 16, 2014.

A handwritten signature in black ink, reading "Brian G. Hansen". The signature is written in a cursive style with a long, sweeping horizontal line at the end.

Brian G. Hansen, P.E., P.G.  
Senior Geological Engineer

## EXHIBIT 3A

**Expert Report  
Of  
Brian G. Hansen, P.E., P.G.**

**In the Matter of  
Asarco LLC v. NL Industries, Inc., et al.  
Case No. 4:11-cv-00864-JAR**

**March 21, 2014**

**Introduction**

This report is submitted on behalf of the Union Pacific Railroad Company (“Union Pacific”) in the matter of Asarco LLC v. NL Industries, Inc., et al., Case No. 4:11-cv-00864-JAR. It summarizes my findings and professional opinions regarding the actions EPA has taken at mining sites in southeastern Missouri and the tendency for mine waste piles to contaminate adjacent areas. This report also rebuts certain observations made by Mr. Paul Rosasco as presented in his report dated January 27, 2014 (Rosasco, 2014a).

I am a geological engineer with over 25 years of professional experience with mining and metals refining sites, subsurface investigations, waste disposal, Superfund, hazardous waste site investigation, and remediation. I hold a Bachelor of Science degree in Geology from Fort Lewis College (Durango, Colorado) and a Master of Engineering, Geological Engineer degree from the Colorado School of Mines. My graduate curriculum emphasized hydrogeology and groundwater contaminant fate and transport. My professional career has focused on the investigation and remediation of mining and mineral processing sites and the fate and transport of metals in the environment. I am a registered Professional Engineer and a registered Professional Geologist. I am a Senior Geological Engineer and partner with Formation Environmental, LLC, an environmental consulting firm located at 2500 55<sup>th</sup> Street, Suite 200, Boulder, Colorado, 80301. A copy of my resume is provided in Attachment A along with a list of my prior testimony.

**Summary Opinions to be Expressed**

I am prepared to offer the following opinions in this matter.

- a. Opinion 1 –The actions that have been or are currently being implemented by EPA at the Big River Mine Tailings/St. Joe Minerals Corporation Site and the Madison County Mines Site (collectively, “Sites”) address major mining-related features that are the primary sources of contamination and residential areas that have become contaminated. None of these actions address railroad rights of way that have been or

are currently owned or operated by Union Pacific or its historic affiliated railroad companies.

- b. Opinion 2 – Water-mobilized contaminants and wind-blown dust originating from the chat piles and tailings impoundments being addressed by EPA at the Sites have broadly impacted adjacent areas, potentially including portions of railroad rights of way.
- c. Opinion 3 – Mr. Rosasco has unreliably identified eroding “chat ballast” in the Sites based on visual observation only and without the benefit of chemical analysis to confirm the presence of chat.
- d. Opinion 4 – Mr. Rosasco has inappropriately applied certain chemical screening criteria in his opinions regarding impacts associated with the presence of mining-related materials in the railroad rights of way in the Sites.

### **Bases for Opinions**

**Opinion 1 – The actions that have been or are currently being implemented by EPA at the Big River Mine Tailings/St. Joe Minerals Corporation Site and the Madison County Mines Site (collectively, Sites) address major mining-related features that are the primary sources of contamination and residential areas that have become contaminated. None of these actions address railroad rights of way that have been or are currently owned or operated by Union Pacific or its historic affiliated railroad companies.**

Seven major areas of mine waste are present in the Big River Mine Tailings/St. Joe Minerals Corporation Site (Bonne Terre Mine Tailings Site, Leadwood Mine Tailings Site, Elvins Mine Tailings Site, Federal Mine Tailings Site, Desloge Mine Tailings Site, Doe Run Mine Tailings Site, and National Mine Tailings Site). At least 13 major mine waste deposits are present in the Madison County Mines Site. Each of these primary sources is large (for example, the National Tailings pile is reportedly 200 feet high and 2,500 feet across; Abbott, 1999); each includes up to several million cubic yards of unvegetated mine waste (prior to any remediation); and many are located immediately proximate to water bodies. As an example, the Desloge Tailings occupy the interior of a horse shoe meander of the Big River and thus the tailings are surrounded by the river on the west, north, and east sides. Metals, including cadmium, lead, and zinc, originating from these primary sources have contaminated soil and water in adjacent areas. In a single event, approximately 50,000 cubic yards of mine waste slumped into the Big River in 1977 during a period of heavy rain (EPA, 2012a). With an approximate lead content of 0.5 percent in the tailings, or 5,000 parts per million, this event alone resulted in the release of over 800,000

pounds of lead to the Big River.<sup>1</sup> Ongoing erosion of the primary sources contributed and will continue to contribute (until remediated) additional lead, along with other metals, to the Big River and other water bodies.

In addition, wind-blown dust from the primary sources has mobilized metals to soil in adjacent areas, including residential areas. Mine waste has reportedly been used on residential properties for fill material and private driveways, used as aggregate for road construction, and placed on public roads as a traction agent in winter (EPA, 2008). Due to the wind-blown dust from the primary sources and incorporation of mine waste into residential settings, EPA has required residential yard remediation.

In contrast to the large, primary sources of mining-related contamination in the Sites, railroad rights of way comprise relatively narrow areas of material that are a few tens of feet wide and a few feet thick that are only locally adjacent to water bodies and residential areas. The small area of possible mine material (chat) in the rail bed per unit area limits the potential for the railroad rights of way to act as sources of metals to the environment. Further, many of the abandoned railroad rights of way are well vegetated which significantly limits any wind-blown dust issues, erosion by surface water, and percolation of rainfall through the rail bed material to groundwater. The active Union Pacific rights of way are well maintained.

Accordingly, EPA's investigative and cleanup actions have appropriately focused on the primary sources of contamination and human exposure. EPA's 2012 Fact Sheet for the Big River Mine Tailings/St. Joe Minerals Corporation Site (EPA, 2012a) indicates that engineering evaluation/cost analyses (EE/CAs) and non-time-critical removal actions (NTCRAs) have been completed for the majority of the primary sources. Similarly, EPA's 2012 Fact Sheet for the Madison County Mines Site indicates that two NTCRAs were completed by 2006, with additional work scheduled for completion in 2012 (EPA, 2012b).

In addition to the aforementioned EPA fact sheets, I reviewed the 2011 Record of Decision for the Big River Mine Tailings/St. Joe Minerals Corporation Site (EPA, 2011a) and the Five-Year Review Report for Madison County Mines (EPA, 2013); the Proposed Plan, Conrad Tailings Operable Unit 4, Madison County Mines Superfund Site (EPA, 2011b), and the Interim Record of Decision, Residential Property Surface Soil (part of Operable Unit 3) at Madison County Mines Superfund Site (EPA, 2008).

All of these documents describe various NTCRAs and final remedies that have been implemented at the Sites to address the release of contaminants to the environment from the primary sources and to control human exposures to contaminants. The NTCRAs and remedies have generally consisted of stabilization and vegetation of mine tailings piles and impoundments

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<sup>1</sup> Based on a typical density of 120 pounds per cubic foot for mine waste.

to limit wind-blown dust and reduce erosion by water with subsequent transport to streams and excavation/replacement of residential-area soils, with placement of the excavated, contaminated soil in repositories. None of the documents I reviewed identified the need to conduct any kind of response actions on railroad rights of way that are owned or operated by Union Pacific or its historic affiliated railroad companies. None of the documents I reviewed suggest that EPA is currently planning to conduct any kind of response actions on railroad rights of way that are owned or operated by Union Pacific or its historic affiliated railroad companies.

Asarco concedes that EPA has taken no action with respect to Union Pacific's railroad rights of way within the Sites. In its September 21, 2012 letter to EPA, Asarco's counsel states "as best we can determine, EPA's current plans fail to address the substantial, on-going contamination from abandoned rail lines of the Union Pacific Railroad Company" (Integer, 2012). Mr. Rosasco agreed with this finding during his February 27, 2014 deposition (Rosasco, 2014b). When asked if he was aware of any location where Asarco settlement funds are being used to remediate Union Pacific right of way, Mr. Rosasco replied "I'm not aware that any remediation of Union Pacific right of way is being performed at this time." Similarly, when asked "are you aware of any Asarco money being used for Union Pacific property or railroad rights of way" during his March 19, 2014 deposition, Asarco's 30(b)(6) witness, Mr. Chris Pfahl, responded "we're not aware of any" (Pfahl, 2014).

**Opinion 2 – Water-mobilized contaminants and wind-blown dust originating from the chat piles and tailings impoundments being addressed by EPA in the Sites have broadly impacted adjacent areas, potentially including portions of railroad rights of way.**

Contaminants are mobilized from the primary sources (tailings piles and impoundments) by wind and water and are dispersed to adjacent areas. As discussed in Opinion 1, over 800,000 pounds of lead were mobilized to the Big River during a single event in 1977. Ongoing erosion of the primary sources contributed additional lead, along with other metals, to the Big River and other water bodies.

An air dispersion modeling effort was conducted to assess the extent to which metal-bearing dust would be distributed from the primary sources (Abbott, 1999). The model used actual meteorological data, assumed an 80-year deposition period, estimated the lead concentrations in undisturbed soil where particulates were modeled to be deposited, and compared the estimated soil lead concentrations with actual soil lead concentrations. Based on the modeling results, it was concluded that the highest modeled deposition rates occurred to the east-southeast of each primary source area, with a secondary impact area to the north of each primary source area. Such model results were produced for the Bonne Terre Tailings, Desloge Tailings, Federal Tailings, and Leadwood Tailings. The predicted surficial soil concentrations were deemed to be in good agreement with measured surficial soil concentrations.

To the extent that any portion of railroad right of way is or becomes impacted by the primary sources, those impacts would constitute releases from the primary sources, not releases from the railroad rights of way.

**Opinion 3 – Mr. Rosasco has unreliably identified eroding “chat ballast” in the Sites based on visual observation only and without the benefit of chemical analysis to confirm the presence of chat.**

At page 3 of his January 27, 2014 report, Mr. Rosasco indicates that he traveled to and inspected various active and abandoned railroad lines in St. Francois and Madison Counties on December 3, 2013. At page 9, Mr. Rosasco states “I observed the presence of coarse sand/fine gravel consistent with chat/mining waste of the rail beds and as fill material beneath railroad grades and within bridge abutments.” At page 19, Mr. Rosasco states “During my site visit, I personally observed erosion of chat ballast and embankment fill from railroad lines and bridge abutments in St. Francois and Madison Counties owned or previously abandoned by Union Pacific or its predecessors.”

Mr. Rosasco conducted no sampling of railroad ballast himself and provides no specific chemical data for the locations where he indicates that he had observed the erosion of chat ballast. He instead relies on chemical data reported by NewFields (2007) and by Asarco (Rosasco, 2014a). I view the Asarco data set to be suspect with regard to characterization of rail bed material because sample location information (i.e., geographic positioning system [GPS] coordinates, latitude/longitude, etc.) has not been provided and the locations are only generally indicated by symbols on maps. Thus, it is unclear whether the samples were collected on the railroad rights of way or in areas off of the railroad rights of way, including nearby primary source areas.

Because Mr. Rosasco did not sample the rail bed material himself, I infer that he identified the presence of chat at these locations based on visual observation of gravel-like material that he has deemed to be consistent with chat. In his February 27, 2014 deposition, Mr. Rosasco clarified the manner in which his observations were made: “I did not walk the active rail lines or any of the property owned or where there was an easement for the rail line. I looked at it from adjacent property.” When asked about the closest distance from which he inspected active rail lines, Mr. Rosasco responded “I don’t recall the specific distances. I didn’t measure them. But 30, 50, 75, 100 feet.”

At page 9 of his report, Mr. Rosasco notes that the particle size of chat ranges from  $\frac{1}{4}$  to  $\frac{5}{8}$  inch. According to NewFields, 2007, “modern railroad ballast that meets American Railway Engineering and Mining Association (AREMA) specifications contains between 45 and 80 percent plus  $\frac{3}{4}$ -inch sized rock.” Thus, based on this characterization, 20 to 55 percent of

modern railroad ballast consists of particles that are less than  $\frac{3}{4}$ -inch in dimension. In my opinion, it would be very difficult, if not impossible, to visually discern a small difference in particle size from a distance of 30 to 100 feet to differentiate between the presence of chat or modern railroad ballast which may have been placed as part of ongoing track maintenance. In the absence of any corroborating chemical data, I therefore conclude that Mr. Rosasco's observations of chat ballast on the railroad lines, as stated on pages 9 and 19 of his January 27, 2014, are unreliable.

**Opinion 4 - Mr. Rosasco has inappropriately applied certain chemical screening criteria in his opinions regarding impacts associated with the presence of mining-related materials in the railroad rights of way in the Big River Mine Tailings/St. Joe Minerals Corporation Site and the Madison County Mines Site.**

At Section D (page 13) of his January 27, 2014 report, Mr. Rosasco provides comparisons of the metals concentration data in rail bed materials reported by NewFields (2007) and Asarco (Rosasco, 2014a) with several regulatory criteria. As noted in Opinion 3, above, the Asarco sample locations are vague and therefore it is not possible to verify whether the samples are reflective of rail bed materials or not. The metals concentration data that Mr. Rosasco relies upon are total metals concentrations (NewFields and Asarco data) and leachate data for metals generated by the Synthetic Precipitation Leaching Procedure (SPLP; EPA Method 1312; Asarco data).

Some of the comparisons presented in Section D of Mr. Rosasco's report are inappropriate. Examples are provided below.

1. At page 16, Mr. Rosasco cites EPA guidance for the use of chat as an aggregate in asphalt and concrete, noting that EPA has specified that SPLP leachate concentrations for such products that include chat should meet National Primary Drinking Water Standards. Mr. Rosasco notes that some of the SPLP leachate concentrations for chat reported by Asarco exceed the National Primary Drinking Water Standards for lead. This comparison is inappropriate because the SPLP testing referenced in EPA's guidance is to be conducted on asphalt and/or concrete products and not chat samples.
2. At pages 16 and 17, Mr. Rosasco cites Probable Effects Levels (PELs) and Probable Effects Concentrations (PECs) for sediment that were developed by McDonald et al. (2000). Mr. Rosasco represents that PELs are the concentrations of trace metals in sediment at which some toxic effects on aquatic life is likely and the PECs are concentrations of trace metals in sediment at which toxicity to benthic organisms is probable. Mr. Rosasco notes that many of the total metals concentrations in rail bed material reported by NewFields and Asarco exceed the PELs and PECs of McDonald et



al. (2000). This comparison is inappropriate because the rail bed material is not sediment in an aquatic setting where exposure to aquatic organisms would occur. In his deposition testimony, Mr. Rosasco admits that he has never previously recommended application of either of these sediment evaluation criteria to soils (Rosasco, 2014b).

3. At pages 17 and 18, Mr. Rosasco cites Missouri Risk-Based Corrective Action Technical Guidance that contains risk-based target levels for protection of aquatic life and human health from chronic and acute exposures to chemicals of concern in water, including cadmium, lead, and zinc. Mr. Rosasco notes that some of the SPLP leachate concentrations reported by Asarco exceed the chronic standards set forth in this guidance. Comparison of the SPLP leachate concentrations to the Missouri risk-based target levels is inappropriate because aquatic and human receptors would not be exposed to pure SPLP leachate originating from rail bed materials. SPLP leachate data merely provide information on the relative potential for leaching; test values are not an appropriate point of comparison for risk-based comparisons because a release would need to reach a water body in sufficient quantity to create an exceedance of the risk-based criteria.

### **Data and Information Considered in Forming My Opinions**

The data and information sources I relied upon to form my opinions are referenced in Attachment B. My opinions reflect my training and expertise as a geological engineer and my prior experience at other mining and minerals refining sites. The information I reviewed, in combination with my training and experience, provide a basis for my opinions that is consistent with that reasonably relied upon by other experts in my field to form opinions about the magnitude of contaminant sources and associated contaminant transport. Use of this information in this manner, in combination with my training and experience, is generally accepted practice within the scientific community. I reserve the right to add to or modify my opinions based upon any new data that may become available to me.

### **Supporting Documents**

The documents I relied upon to form my opinions are listed in Attachment B. I reserve the right to supplement the list of documents contained in Attachment B in response to new information or data, or in response to any ongoing discovery activities.

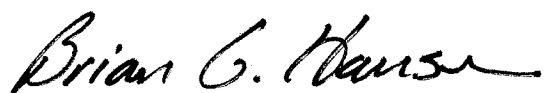
### **Compensation**

Formation Environmental, LLC receives \$179/hour for my normal work related to this matter and \$268.50/hour for work while providing expert testimony. The total amount invoiced by Formation Environmental, LLC through February 2014 in connection with this matter is approximately \$16,900.

**List of Prior Expert Testimony**

A list of my prior expert testimony is provided in Attachment A along with my resume.

**Signature**

A handwritten signature in black ink that reads "Brian G. Hansen". The signature is written in a cursive style with a horizontal line at the end.

March 21, 2014

**ATTACHMENT A  
RESUME  
AND  
LIST OF PRIOR EXPERT TESTIMONY**

**PRIOR EXPERT TESTIMONY PROVIDED BY BRIAN G. HANSEN, P.E., P.G.**

Dent/Skeen v. Asarco Incorporated (Case No. CV-02-65-M-DWM) and Rapier v. Asarco Incorporated (Case No. CV-02-67-M-DWM). Deposition - February 2004. Trial testimony - November 2004.

U.S. v. Asarco, et al., No. 96-0122-N-EJL. Deposition - April 2005.

Chapter 11 bankruptcy of ASARCO, LLC, Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, Case No. 05-21207. Depositions – April and May 2009. Bankruptcy hearing testimony – May 2009.

**Brian G. Hansen, P.E., P.G.**  
**Senior Geological Engineer**

Mr. Hansen has 29 years of experience in the fields of geology, geological engineering, and hydrogeology. He provides project management and engineering expertise for environmental investigation and remediation projects, including:

- Groundwater and soil investigation design and data interpretation;
- Contaminant fate and transport evaluations;
- Remedial Investigations/Feasibility Studies;
- Engineering Evaluations/Cost Analyses;
- Remedial Design/Remedial Action; and
- Litigation support, including expert testimony.

**REPRESENTATIVE EXPERIENCE**

**Smoky Canyon Phosphate Mine, Idaho.** Contributing author to the Engineering Evaluation/Cost Analysis (EECA) for the mine site that evaluated several removal action alternatives to reduce mobilization of selenium from site waste rock piles. Served as project manager and regulatory liaison for Removal Action construction activities associated with water diversion around a 26-million cubic yard overburden pile, which fills a stream valley. The construction activities include a 10,000 foot pipeline, a partially lined infiltration basin, and a 4,000-foot run-on control channel. The water diversion measures are designed to significantly reduce selenium loadings originating from the pile. Currently serving as Engineer of Record for a second Removal Action that consists of placing a revegetated, earthen cover system on the overburden pile to reduce infiltration of precipitation.

**Talache Mine Tailings Site, Idaho.** Served as project manager and Engineer of Record for site characterization, preparation of EE/CAs, and ecological/human health risk assessments, and tailings piles closure. Oversaw a team of engineers during the development of the remedial design that addressed collection of dispersed tailings and stabilization of the tailings ponds, and coordinated oversight of the construction. Served as Corporate Representative [30(b)(6)] witness for a mining/smeltering company regarding its historic operations at the site. Provided testimony in a deposition and during a bench trial with respect to cost allocation among the parties responsible for Site cleanup. Also prepared an expert report and provided expert witness testimony in an arbitration regarding faulty construction work by a remediation contractor.

**Anaconda Copper Mining Company (ACM) Smelter and Refinery Site, Montana.** Assisted counsel in reviewing and commenting on EPA's Hazard Ranking System score for this former copper smelter located near Great Falls, Montana. The site was placed on the National Priorities List in 2011 and includes several hundred residential properties that may have been impacted by aerial emissions from the former smelter. Currently serving as project manager for the Remedial Investigation/Feasibility Study (RI/FS) for Operable Unit 1 of the site, which includes adjacent residential areas.

**Butte Priority Soils Operable Unit (BPSOU) Phase II Remedial Investigation/Feasibility Study (Silver Bow Creek/Butte Area Superfund Site), Montana.** Served as project manager for the Phase II RI/FS, which spanned over ten years. The primary issues at this site are waste rock piles proximal to residences; elevated lead concentrations in some residential yards; metals-impacted storm water runoff; and metals-impacted groundwater. The project included coordination of a diverse PRP group and liaison with EPA, the state regulatory agency, and technical representatives of a local citizens' group. The FS evaluated six distinct alternatives for soil, surface water, storm water, and groundwater remediation in the Butte urban area. Currently providing assistance to the responsible party during Consent Decree negotiations.

**Asarco LLC Bankruptcy - Miscellaneous Federal and State Sites.** Expert witness regarding reasonable settlement amounts for 25 former mining and metals refining sites across the United States. The settlement amounts, which were negotiated between Asarco LLC, the federal government, and several state governments, were contested by a creditors' committee in the Bankruptcy Court for the Southern District of Texas in May 2009. Prepared an expert report and provided testimony during both a deposition and the bankruptcy hearing. The total settlement amount for the 25 sites was approximately \$100,000,000. The court ruled in favor of the settlement amounts.

**Confidential Site, Brazil.** Prepared and oversaw the execution of a soil sampling and analysis plan to evaluate the extent of metals contamination in soil at this remote former mining site.

**Dresser Industries-Magcobar Mine Site, Arkansas.** Serving as project manager for the Site Investigation and Feasibility Study at this former barite mining property. The Site includes a flooded mine pit, over 20 million cubic yards of acid-generating mine spoil, and tailings ponds. The Site Investigation includes baseline human health and ecological risk assessments. The Arkansas Department of Environmental Quality is in the process of formally selecting the remedial alternative recommended in the Feasibility Study.

**El Paso Copper Smelter, Texas.** Provided litigation support, prepared expert report, and provided testimony during a deposition regarding the quantity of groundwater that may need to be extracted and treated to facilitate reconstruction of a canal adjacent to the smelter site.

**Coeur d'Alene Basin, Idaho.** Provided technical support to counsel in preparation for Natural Resource Damages litigation against private mining companies. Prepared an expert report and provided testimony during a deposition regarding lead emissions from a former milling and smelting operation as well as the environmental impacts of tailings that were used to construct an interstate highway.

**Eureka Mills Superfund Site, Utah.** Provided technical assistance to a major railroad company and its counsel during successful settlement negotiations with EPA and the Utah Department of Environmental Quality. Provided project coordination and regulatory liaison on behalf of the railroad.

**Bunker Hill Superfund Site, Idaho.** Provided management and hydrogeological expertise supporting the RI/FS and various remedial designs for this site, which is impacted by mine tailings and lead-smelter emissions. These designs addressed remediation of residential yards, commercial properties, rights-of-way, water well closure, smelter demolition and closure, closure of a 265-acre tailing impoundment by capping, and development of a large (174-acre) constructed wetland treatment system.

**Iron Mountain Mine Site, Montana.** Prepared expert reports, provided deposition testimony, and participated as an expert witness on behalf of a mining company defendant in a jury trial regarding the potential presence of mine tailings on the plaintiff's property. In a separate action, prepared an expert report to assist the mining company in its defense of a lawsuit alleging that tailings from the client's historic mining site had impacted a natural spring that served as the water supply for a nearby community.

**Triumph Mine Tailings Piles Site, Idaho.** Served as project manager for Remedial Design/Remedial Action activities at the site. The project involved residential yard remediation, regrading and capping of two tailings piles and a waste rock pile, and installation of a concrete mine-adit plug.

**Abandoned Railroad Right-of-Way, Washington.** Managed and provided engineering expertise for removal of lead-bearing railroad ballast (impacted from mine tailings) from residential areas. Overall, approximately 60,000 tons of ballast were removed, with approximately 19,000 tons requiring chemical stabilization prior to disposal to limit potential leaching of lead.

**Metal Recycling Sites, Montana and Idaho.** Managed and oversaw subsurface investigation and remediation of impacts associated with former lead battery recycling operations at three operating facilities. Remediation included chemical fixation of the lead.

**Upper Blackfoot Mining Complex (Hedderston District), Montana.** Managed, provided engineering expertise, and served as regulatory liaison for voluntary remedial activities at a complex mining site in western Montana. The project included 1) relocation of mine waste rock to engineered repositories, and 2) construction of passive biological treatment systems (constructed wetlands) to address mine-adit discharges.

**Canyon Creek, Idaho.** Provided management and engineering expertise for the design of a pilot bioreactor project to treat mine adit discharge. The bioreactor system was designed to treat up to 10 gpm through either a high-permeability (gravel substrate) bioreactor or a low-permeability (compost-based) bioreactor.

**Alleged Clean Water Act Violations, Washington.** Provided technical assistance to a confidential mining client and its counsel during summary judgment activities in connection with a lawsuit alleging violations of the Clean Water Act due to seepage from tailings ponds.

**“Shadow” Hazard Ranking System Scoring, Idaho.** Scoring was conducted for an open-pit mine/cyanide heap leach facility to assist the confidential client in assessing potential CERCLA liabilities. The shadow scoring showed that, using the flexibility in the HRS, the site could either be listed on the NPL or not, depending on the assumptions used.

**Industrial Landfill, California.** Conducted a computer modeling study to assess the effectiveness of various alternative extraction well arrays in terms of containing or extracting a plume of volatile organic constituents in groundwater originating in the industrial landfill.

## **REGISTRATIONS AND PROFESSIONAL AFFILIATIONS**

Registered Professional Engineer in Arkansas, Idaho, Montana, Nevada, and Washington.

Registered Professional Geologist in Wyoming.

Member, Association of Engineering Geologists (AEG)

Member, American Society of Civil Engineers (ASCE)

## **EDUCATION AND TRAINING**

M.E., Geological Engineering - Colorado School of Mines, 1988

B.S., Geology - Fort Lewis College, Durango, Colorado, 1983

Hazardous Waste Site Health and Safety Training (40 hours, OSHA Hazardous Waste Operations Standard 1910.120), Dames & Moore, 1988; annual 8-hour refreshers, 1990 through 2008.

Practical Application of the Hydrologic Evaluation of Landfill Performance (HELP) Model to Landfill Evaluation, Colorado School of Mines, Golden, CO, December 1986.

Passive Treatment of Mining Influenced Waters. Tailings & Mine Waste '03, Vail, CO. November, 2003.

## **WORK HISTORY**

Senior Geological Engineer, Partner – Formation Environmental, LLC; Colorado (2009 - Present)

Senior Engineer/Hydrogeologist, Partner – NewFields Boulder, LLC; Colorado (2004 - 2009)

Senior Engineer/Hydrogeologist – MFG, Inc. (now TetraTech MM); 1991-1993: Colorado; 1994-2002: Montana; 2002-2004: Colorado.

Project Hydrogeologist/Geological Engineer - Dames & Moore; Colorado (1988-1991)

Graduate Research Assistant - Kansas Geological Survey (1987-1988)



Engineering Geologist - Michael W. West & Associates; Colorado (1986-1988)

Hydrologic Technician - U.S. Geological Survey; Colorado (1985-1986)

Civil Engineering Technician - R.V. Lord & Associates; Colorado (1984)

## **PUBLICATIONS**

Co-author, "U.S. Geological Survey Urban Stormwater Database of Constituent Storm Loads; Characteristics of Rainfall, Runoff, and Antecedent Conditions; and Basin Characteristics." U.S. Geological Survey Water-Resources Investigations 87-4306.

Author, "Evaluating the Hydrogeology of Meade County, Kansas, Using Vertical Variability Analysis and Numerical Modeling." Kansas Geological Survey Open File Report 88-47.

## **PRESENTATIONS**

Presentor, "Mine Waste and Water Management at the Upper Blackfoot Mining Complex, Montana." Tailings & Mine Waste '99 Conference, Fort Collins, Colorado, January 1999.

Co-presentor, "Remediation of Mining Sites," Rocky Mountain Mineral Law Foundation Special Institute on RCRA and CERCLA "Changing Requirements for Hazardous Substances in the Natural Resource Industries," Denver, Colorado, April 1997.

Association of Engineering Geologists 1989 Annual Meeting, Vail, CO. Presentation of paper: "Evaluating the Hydrogeology of Meade County, Kansas, Using Vertical Variability Methods and Numerical Modeling."

## **AWARDS**

Association of Engineering Geologists (AEG) Marliave Scholar, 1987.

Eugene M. Shoemaker Outstanding Senior Geologist, Fort Lewis College, 1983.

**ATTACHMENT B**  
**LIST OF INFORMATION SOURCES RELIED UPON**

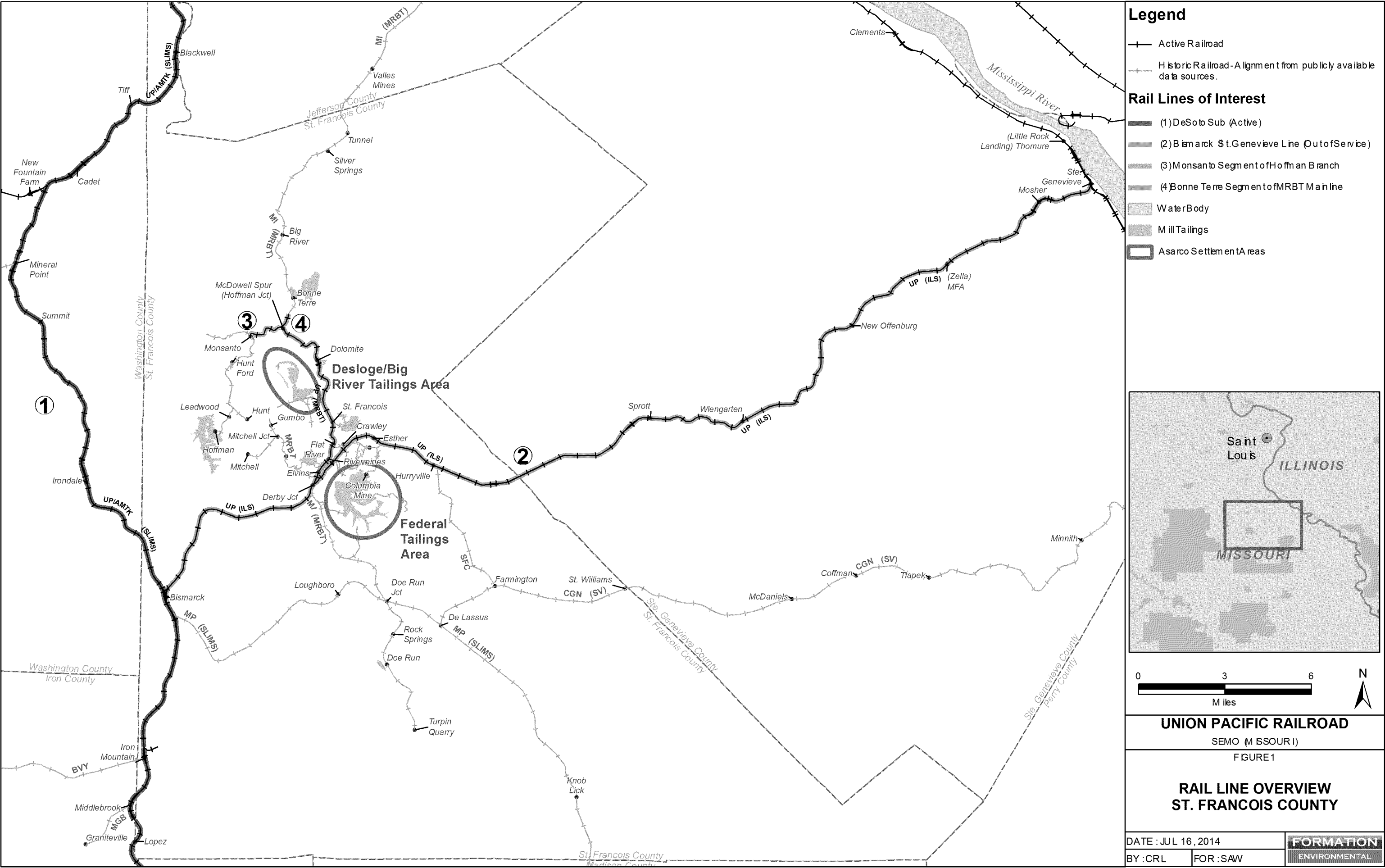
### **List of Information Sources Relied Upon**

- Abbott, 1999. Air Dispersion Modeling of Mine Waste in the Southeast Missouri Old Lead Belt. Prepared for the U.S. Department of Energy, Assistant Secretary for Environmental Management, Under DOE Idaho Operations Office Contract DE-AC07-99ID13727. Prepared by Idaho National Engineering and Environmental Laboratory Integrated Earth Sciences Department, Idaho Falls, Idaho. October. Presented as Appendix B-1 of NewFields, 2007. ARCOSEMO00022967.
- EPA, 2008. Interim Record of Decision, Residential Property Surface Soil (Part of operable unit 3), Madison County Mines Superfund Site in Madison County, Missouri. Prepared by U.S. EPA Region 7. July.
- EPA, 2011a. Big River Mine Tailings Superfund Site, St. Francois County, Missouri, CERCLIS ID#: MOD981126899, Operable Unit 1. Prepared by U.S. EPA Region 7. September.
- EPA, 2011b. Proposed Plan, Conrad Tailings Operable Unit 4, Madison County Mines Superfund Site, Madison County, Missouri. Prepared by U.S. EPA Region 7. July.
- EPA, 2012a. Big River Mine Tailings/St. Joe Minerals Corporation Site, Missouri. Fact Sheet. EPA ID# MOD981126899. EPA Region 7. City: Desloge. County: St. Francois County. April 24, 2012.
- EPA, 2012b. Madison County Mines, Missouri. Fact Sheet. EPA ID# MOD098633415. EPA Region 7. City: Fredericktown. County: Madison County. May 21, 2012.
- EPA, 2013. Five-Year Review Report for Madison County Mines Superfund Site, Madison County, Missouri. Prepared by U.S. EPA Region 7. September.
- Integer, 2013. Letter from Gregory Evans, Integer Law Corporation, to Jason Gunter, Project Manager, U.S. EPA Region 7. September 21.
- NewFields, 2007. Focused Remedial Investigation for Mined Areas in St. Francois County, Missouri. Prepared for the Doe Run Company by NewFields, Denver, CO. March. ARCOSEMO000022820.
- Pfahl, 2014. Deposition transcript of John Christopher Pfahl, P.E., rough transcript only; official transcript unavailable on report date. March 19.

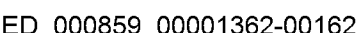
Rosasco, 2014a. Expert Report of Paul V. Rosasco, P.E. Asarco LLC v. NL INDUSTRIES, INC. et al. Case No. 4:11-CV-00864 JAR. January 27.

Rosasco, 2014b. Deposition transcript of Paul V. Rosasco, P.E., not all reference documents available on report date. February 27.

## EXHIBIT 3B

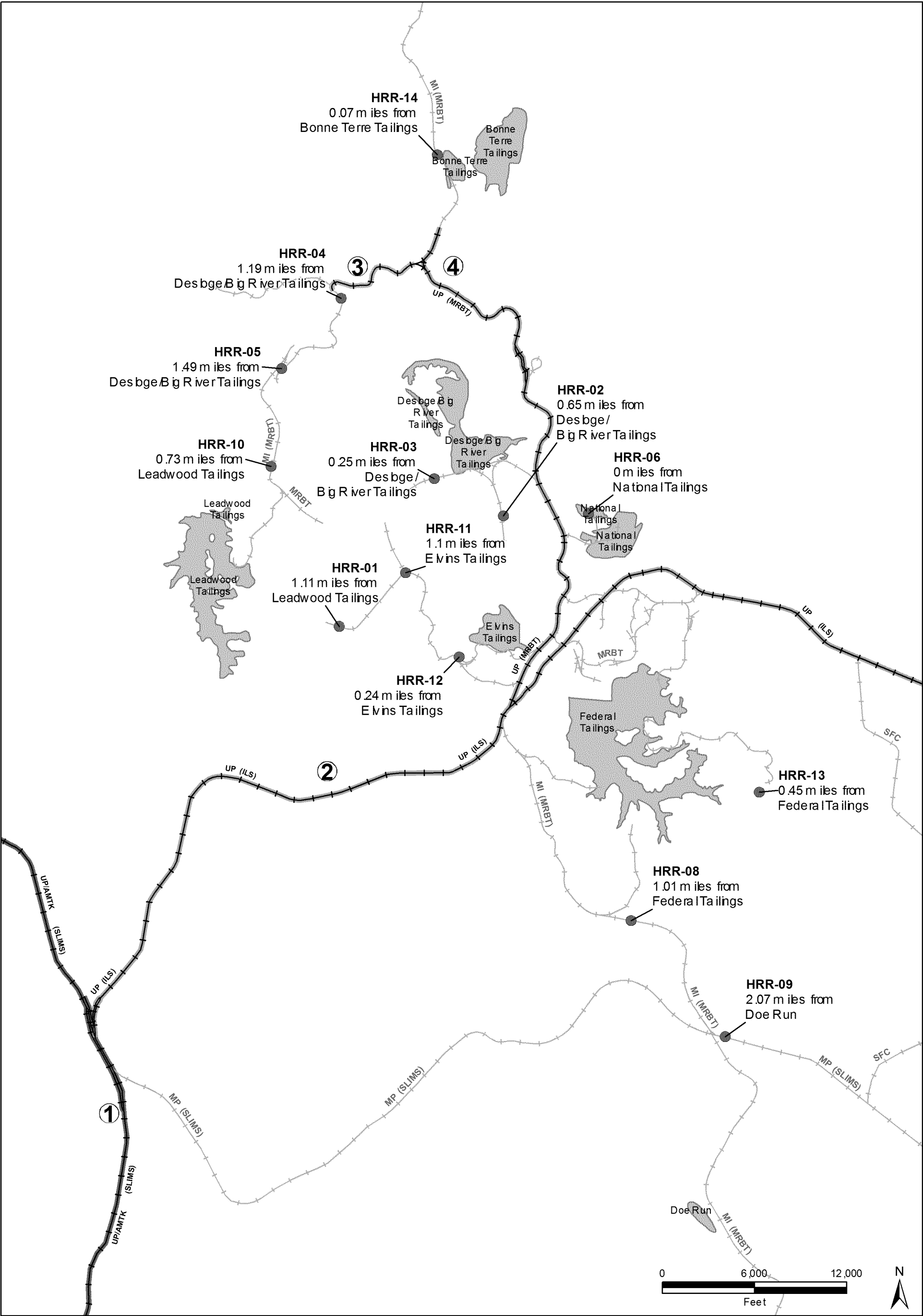


# EXHIBIT 3C





## EXHIBIT 3D



**Legend**

- Newfields Sample Locations (Nov. 2006)
- Tailings Area
- Active Railroad
- Historic Railroad - Alignment from publicly available data sources.

**Rail Lines of Interest**

- (1) DeSoto Sub (Active)
- (2) Bismarck St. Genevieve Line (Out of Service)
- (3) Monsanto Segment of Hoffman Branch
- (4) Bonne Terre Segment of MRBT Mainline

**UNION PACIFIC RAILROAD**  
SEMO (MISSOURI)

**FIGURE 3**

**PROXIMITY OF NEWFIELDS SAMPLE LOCATIONS TO TAILINGS PILES**

DATE: JUL 16, 2014		<b>FORMATION</b> ENVIRONMENTAL
BY: CRL	FOR: SAW	

# EXHIBIT 4

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

IN RE: ) CASENO: 05-21207  
)  
)  
ASARCO, LLC., ) CorpusChristi, Texas  
)  
) Monday, May 12, 2008  
) (2:44 p.m. to 3:04 p.m.)  
\_\_\_\_\_  
Debtor. )

MOTION HEARING

BEFORE THE HONORABLE RICHARD S. SCHMIDT,  
UNITED STATES BANKRUPTCY JUDGE

Appearances: See next page  
Courtroom Deputy: Frances Carbia  
Court Recorder: Janet Silika  
Transcribed by: Exceptional Reporting Services, Inc.  
14493 S. Padre Island Drive  
Suite A-400  
Corpus Christi, TX 78418-5940  
361 949-2988

Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

EXCEPTIONAL REPORTING SERVICES, INC

UPRR-000220

ED\_000859\_00001362-00166

APPEARANCES FOR:

Debtor: NATHANIEL PETER HOLZER, ESQ.  
KEVIN J. FRANTA, ESQ.  
Jordan Hyden Womble and Culbreth  
500 N Shoreline  
Suite 900 N  
Corpus Christi, Texas 78471

TONY DAVIS, ESQ.  
KEVIN COLLINS, ESQ.  
Baker Botts, LLP  
1500 San Jacinto Center  
98 San Jacinto Boulevard  
Austin, Texas 78701

APPEARANCES TELEPHONICALLY FOR:

Asarco, LLP: J. BARTON SEITZ, ESQ.  
Baker Botts

Asarco, Incorporated: WILLIAM R. PLETCHER, ESQ.  
GREGORY L. EVANS, ESQ.  
Milbank Tweed, et al.  
601 S. Figueroa Street  
30<sup>th</sup> Floor  
Los Angeles, CA 90017

Witness: JEFF ZELIKSON (Witness)

Witness: RICHARD WHITE (Witness)  
LECG

Official Committee of Unsecured Creditors: HARLEY TRICE, ESQ.  
Reed Smith, LLP

Official Committee of Unsecured Creditors of Debtor Subsidiaries: DAVID A. KLINGLER, ESQ.  
Stutzman Bromber, Esserman, et al.  
Capco:

Harbinger Funds: ANDREA HOGAN, ESQ.  
Latham and Watkins

APPEARANCES TELEPHONICALLY FOR: (Continued)

Mitsui and Company (USA) Incorporated:	STEPHEN A. GOODWIN, ESQ. Carrington Coleman Sloman and Blumenthal 901 Main Street Suite 5500 Dallas, Texas 75202
U.S. Department of Justice:	ALAN S. TENENBAUM, ESQ. U.S. Department of Justice Ben Franklin Station P.O. Box 7611 Washington, DC 20044
Missouri Department of Natural Resources:	SHELLEY A. WOODS, ESQ. Missouri Attorney's General's Office 221 W. High Street Jefferson City, MO 65101
Official Committee of Unsecured Creditors of Asarco, LLC:	EDWARD J. ESTRADA, ESQ. Reed Smith, LLP
Majority Bondholders:	WEITING HSU, ESQ. Winstead, PC
Doe Run Resources Corporation dba: Doe Run Company:	THOMAS A. CREEKMORE, III, ESQ. Hall Estill, et al 320 S. Boston Avenue Suite 400 Tulsa, OK 74103
United States:	ERIC D. ALBERT, ESQ. DAVID HORTON, ESQ. U.S. Department of Justice P.O. Box 7611 Washington, DC 20044
Asarco, LLC:	DON ROBBINS, Witness in Pro Per
Robert Pate, Future Claims Representatives:	ROBERT K. SUGG, ESQ. (Listen Only) Oppenheimer Blend, et al. 711 Navarro Sixth Floor San Antonio, Texas 78205

1           **MR. HUFFT:** Plainfield Asset Management.

2           **THE COURT:** Okay. Anyone else?

3           **(No response)**

4           All right. In the courtroom?

5           **MR. DAVIS:** Tony Davis and Kevin Collins for ASARCO,  
6 LLC.

7           **MR. FRANTA:** Kevin Franta and Pete Holzer also for  
8 the Debtor.

9           **THE COURT:** All right. Go right ahead.

10          **MR. DAVIS:** Thank you, your Honor.

11                 We'll start with the 9019 motion where we seek  
12 approval of an environmental settlement involving the Southeast  
13 Missouri sites or SEMO sites, a settlement entered into between  
14 the Debtors, the United States and State of Missouri and Doe  
15 Run in which \$707 million worth of claims were compromised for  
16 \$79.5 million.

17                 We have now -- we've completed 20 settlements.  
18 Twenty settlements of the environmental type have been approved  
19 by the Court, including most recently the Encycle settlement.  
20 The objection period went past this past week. The Parent  
21 elected not to object, which we appreciated. We did talk and  
22 discuss with the Parent before that objection deadline came,  
23 and they were apparently satisfied by that.

24                 We have nine of the pipeline, including this one.  
25 Three are currently pending, including this one. This is one

1 of three mega sites that we have in this case. It's  
2 arbitrarily defined as sites where the claims total more than a  
3 half a billion dollars.

4 The first was the Tri State site, which this Court  
5 approved a settlement amount of \$158 million general unsecured  
6 claim.

7 The second is the Coeur d'Alene site, which was  
8 estimated and which currently we've asked the Court to defer  
9 from ruling on, so we'll either be back to ask for a ruling or  
10 perhaps we'll be back in a 9019 context on a settlement for  
11 that site, as well.

12 This site consists of five separate sites located in  
13 southeast Missouri that largely came from historical lead  
14 mining operations.

15 What I'd like to do at this point, your Honor, is  
16 hand up a couple of pages from our exhibits. And for those on  
17 the phone it'll be Exhibit 10, Page 1 and Exhibit 9, Pages 1  
18 and 2. If I may approach?

19 **THE COURT:** All right.

20 **MR. DAVIS:** Exhibit 10, Page 1, which is titled Total  
21 Response Costs and NRD for SEMO, kind of the same story that  
22 you've seen with the other settlements. At the far right-hand  
23 side of the page, the combined claims are \$707 million, which  
24 is reflected through expert reports submitted by the United  
25 States Missouri and I believe Doe Run.



1           At the left side of the page you see LECG's estimate  
2 of Debtor's apportioned share of total response costs at  
3 \$10.26 million. Doctors Powell and Devosha (phonetic) for the  
4 Parent submitted reports totaling \$13.7 million. And the  
5 settlement amount within that range but, again, closer to the  
6 Debtor's experts, is \$79.5 million. Again, these are all in  
7 response costs and NRD across all five sites. The \$707 million  
8 number is a joint and several number, whereas the settlement  
9 number somewhat follows, you know, basically, a negotiated  
10 figure for apportionment of total damages.

11           The next page total net for resource damages for SEMO  
12 sites, which is Exhibit 9, Page 1, again, this time at the  
13 left-hand side of the page we'll have the claims asserted by  
14 the United States Missouri for \$397 million total NRD. The  
15 settlement is at \$35 million for that part, and LECG total  
16 costs of \$5.4 million in natural resource damages, of which the  
17 Debtor's cost share according to LECG is about \$2.3 million.

18           And then finally, total response cost for SEMO sites,  
19 which at the bottom is Exhibit 9, Page 2, the far left-hand  
20 side of the page at the bottom United States' total response  
21 cost of \$267,560,000 the state of Missouri. And Doe Roe you  
22 have a duplicative claim, the Missouri for 29 million, Doe Run  
23 for 22 million, which I believe is the Glover Smelter  
24 (phonetic) future cost.

25           The settlement amount for all response costs is

1           **MR. COLLINS:** No, sir. Your Honor, we just have the  
2 Order Approving Settlement Agreement After Public Comment.

3           **THE COURT:** Okay. Well, I've reviewed the proffers.  
4 In view of the fact that there are no objections and there is  
5 certainly a substantial record now to support the settlement as  
6 it has been announced, both the exhibits and the proffers do,  
7 in fact, support the settlement. And I find that it meets the  
8 provisions of *Protective Committee versus Anderson* and should  
9 be approved, and I have the Order.

10           What is today's date?

11           **MR. HOLZER:** May the 12<sup>th</sup>, your Honor.

12           **THE COURT:** Thank you.

13           **MR. SPEAKER:** Thank you, your Honor.

14           **THE COURT:** All right. Thank you. Next.

15           **MR. FRANTA:** Your Honor, next we have the Debtor's  
16 objection to Claim 9429 filed by Billy Tyler.

17           **MR. SPEAKER:** Your Honor, may the parties be excused?

18           **THE COURT:** If anyone is not on -- if you're just  
19 here for the Doe Run, Missouri, Southeast Missouri settlement,  
20 you're excused.

21           **SEVERAL COUNSEL:** Thank you, your Honor.

22           **THE COURT:** Okay. Now, this Order Approving the  
23 Settlement After Public Comment, do I need to sign that, also?

24           **MR. DAVIS:** Yes, your Honor.

25           **THE COURT:** And it's still the 12<sup>th</sup>, right?

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in cursive script, appearing to read "Toni Hudson", is positioned above a horizontal line.

Signed

May 15, 2008

Dated

*TONI HUDSON, TRANSCRIBER*

# EXHIBIT 5

## RECORD OF DECISION

CATHERINE MINES and SKAGGS TAILINGS SUBSITES  
OPERABLE UNIT 05

MADISON COUNTY MINES SUPERFUND SITE  
MADISON COUNTY, MISSOURI

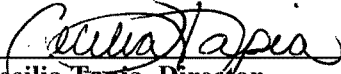


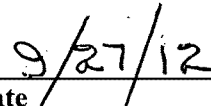
Prepared by:

U. S. Environmental Protection Agency  
Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

SEPTEMBER 2012

Approved by:

  
Cecilia Tapia, Director  
Superfund Division

  
Date



UPRR-001936

## COMMUNITY PARTICIPATION

Since 1999, the Madison County Environmental Roundtable has been meeting bimonthly to discuss the health and environmental concerns related to the Site. These meetings have included representatives from the EPA, MDNR, MDHSS, MCHD, the Agency for Toxic Substances and Disease Registry, elected officials of Fredericktown and Madison County, news media, visiting academia and students and local citizens. A health education program involving all stakeholders provides proactive forums to educate the community on health issues including prevention of lead exposure, safe handling practices, in-home lead assessments and child blood lead testing.

The public was encouraged to participate in the Proposed Plan process in development of this ROD. The Proposed Plan highlighted key information from the RI Report, FS Report, Baseline Human Health Risk Assessment (BHHRA), Ecological Risk Assessment (ERA) and other supporting documents in the AR. Additionally, the public historically has been made aware of the environmental issues in the county through fact sheets, public availability sessions and press releases during the previous removal and remedial cleanups that have occurred and continue at the Site. To provide the community with an opportunity to submit written or oral comments on the Proposed Plan for OU5, the EPA established a 30-day public comment period from July 19 to August 19, 2012. The notice of availability of the AR file and the Proposed Plan was published in the Democrat News on July 19 and 21, 2012.

A public meeting was held on July 24, 2012, at 6:30 p.m. at the Black River Electric Cooperative in Fredericktown, Missouri, to present the Proposed Plan, accept written and oral comments and answer any questions concerning the proposed cleanup. The EPA also used the public meeting for OU5 to talk about the ongoing residential cleanup and other details concerning provisions of the Proposed Plan, including conversations with the property owner of the Catherine subsite to facilitate establishing environmental covenants with property owners to be included in the ROD. A total of 18 local residents, a property owner, representatives of two companies, and local, state and federal government officials attended the public meeting. A transcript of the public meeting has been included in the AR. A summary of questions received at the public meeting and the responses is provided in the attached Responsiveness Summary. The Responsiveness Summary also contains a summary of written correspondence received during the public comment period and the EPA's written responses to public comments.

## SCOPE AND ROLE OF THE RESPONSE ACTION

The EPA's overall strategy is to remove soils at residences and child high-use areas that contain soils contaminated with lead above 400 ppm, and transport them to repositories within Madison County already containing mine and mill wastes. The residential yards and child high-use areas are backfilled with clean soil, vegetated and will have a marker barrier placed at 2-foot depth if the remaining lead concentration exceeds 1,200 ppm to warn residents of the presence of residual contamination. See the Site's History and Enforcement Activities for a description of prior response actions.

The Selected Remedy for this ROD presents the EPA's approach to address OU5 C&STS that includes consolidating perimeter mine waste and soil, floodplain soil and sediment in ponds with mine waste and covering the consolidated wastes with protective caps. MNR of surface water and sediment in streams will be implemented to ensure that future clean sediment deposition will prevent exposure and downstream migration of contaminants. Environmental covenants pursuant to MoECA will prevent damage to the caps, drilling of wells and consumptive use of groundwater.

The Site has been divided into seven OUs (see Figure 2) to organize the work into logical elements based on similar contaminated media, geographic and demographic features of the Site, and setting priorities for the work. The final decisions on cleanups for the other OUs will be issued in the future as RODs under remedial authority. The seven OUs are described in detail as follows:

- OU1 is located in northern Madison County and consists of the Mine La Motte Recreation Association (MLMRA) that contains approximately 250 acres of tailings; the Slime Pond (a 100-acre lake that adjoins the MLMRA); the Harmony Lake area; the Copper Mines mine waste; the Old Jack Mine; the Lindsey Mine; the Offset Mine, the small gage feeder rail right-of-way to the abandoned Black Mountain spur; and all other areas affected by these mining activities.
- OU2 is located immediately southeast of Fredericktown and includes the A, B, C, D and E Tailings Areas (historically called the Madison Mine); the metallurgical pond; remnants of an old mill and smelter; head frame and abandoned shafts; a mine decline; a refinery complex; a chat pile; the abandoned Black Mountain spur right-of-way through Fredericktown; and all other areas affected by these mining activities.
- OU3 includes all residential properties including public areas in Madison County as well as the entire cities of Fredericktown, Junction City, Cobalt Village and the LSFR tailings. Within and around the cities and the LSFR area, OU-3 also includes all streets, road right-of-ways, public drainage ways, possible smelter stack and mine waste pile wind-blown contamination, groundwater, surface water and sediments in Goose Creek and Tollar Branch, and mine works locations and outflows.
- OU4 includes the entire Conrad tailings pile and associated mine waste of the adjoining Ruth Mine and Mill complex, surface water and sediments affected by the mine waste, eroded materials to the LSFR from the mine waste source location, road right-of-ways and public drainage ways, possible smelter stack and mine waste pile wind-blown contamination, groundwater impacts, and mine works locations and outflows.
- OU5 includes the Catherine Mines and Skaggs Tailings subsites with mine waste, soil, pond sediment, and groundwater and residential properties affected by a former overhead tram from the Catherine Mine to the LSFR tailings. OU5 also includes surface water, floodplain soil, sediment and groundwater affected by the Catherine and Skaggs mine waste as well as nearby mine works' locations and outflows.
- OU6 includes all other known and undiscovered mining-related contaminated areas including but not limited to the Silver Mines area, nearby groundwater, surface waters and sediments in the unnamed runoffs to the LSFR, road right-of-ways, public drainage ways and mine works locations and outflows.
- OU7 includes impacted drainages, tributaries, creeks and rivers from mine waste within the LSFR watershed.

Under the Selected Remedy, OU5 CM&STS is the third OU to be addressed under remedial action. The approach by the EPA at the Site has been to address the higher risks areas first. The EPA has already selected a remedy for a portion of OU3 with an Interim Record of Decision (IROD) signed in 2008 for residential property soils to address cleaning up areas posing the greatest and most immediate threats to

human health by removing contaminated soil and transporting it for capping at the Conrad repository. This is a continuation of residential property actions implemented in Madison County with removal actions beginning in 2000. The final actions for OU3 will include the remaining portion of the LSFR tailings, public right-of-ways, easements and drainage ditches and will be addressed by a final ROD for OU3. These OU3 actions will be addressed in the future since there is less overall human health risk associated with them. The EPA has also selected a remedy for OU4 – Conrad Tailings with a ROD completed in September 2011, to address mine waste at the tailings pile which is also used as a residential soils repository. The remedy for OU4 also addresses groundwater, associated downstream impacts to sediment, floodplain soils and overbank deposits, surface water in the unnamed tributary to Mill Creek and the affected soils along County Road 200.

A Supplemental Remedial Investigation/Focused Feasibility Study (RI/FS) has been performed for OUs 1, 2, 3, 5 and 6. The Supplemental RI did not include any additional assessment of OU5 so a separate FS was conducted for OU5. The RI/FS for the remaining OUs are ongoing. OU7 is scheduled as the last remedial action for the Site to address human health and environmental exposures to contamination related to the stream systems that will not be addressed by remedial actions under the other OUs. The final OU7 remedial actions will be supported through a Watershed Master Plan for community involvement and acceptance.

This ROD describes the selected approach by the EPA to address OU5 CM&STS. Additional investigation is planned during the Remedial Design/Remedial Action (RD/RA) phase to more fully characterize the overall extent of contamination in the transition soils outside the mine waste piles and at former mine/mill locations, and in and along the associated water courses for the purpose of supplementing construction design, determining final costs, and determining the extent of monitoring necessary to document the natural recovery of downstream sediments.

## **SITE CHARACTERISTICS**

**Conceptual Site Model:** A conceptual site model (CSM) for human exposure pathways to heavy metals resulting from mine waste at the Site is included as Figure 4. It should be noted that although the CSM covers all anticipated exposure at the Site, this ROD is focused on addressing OU5 with mine waste as the source material which has impacted surface soils, sediment in ponds and water courses, surface water, and groundwater. Residential properties determined impacted along the path of the former aerial tramway are being assessed and remediated in the response actions associated with the OU3 IROD – Residential Soils.

**Size of Site/Geographical and Topographical Information:** The Site covers all of Madison County, Missouri, as depicted in Figures 1 and 2, which is approximately 498 square miles. OU5 CM&STS is located approximately two miles north and west of Fredericktown along Highway 67, adjacent to and west of Highway H in Sections 1 and 2, Township 33N, Range 6E, Madison County, Missouri. It consists primarily of four remnant chat and tailings deposits covering approximately 27 acres that includes approximately four acres of sediment and floodplain soil in ponds and associated tributaries and creeks. It also includes an estimated two-mile pathway of a former aerial tramway that was used for transporting development rock from the Skaggs Tailings subsite to a former mill located to the southeast along the LSFR.

**Surface and Subsurface Features:** Madison County is subdivided into the St. Francois Mountains on the western side and the Salem Plateau on the eastern side of the county. Topographically, the



# EXHIBIT 6

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION**

<b>In re:</b>	§	<b>Case No. 05-21207</b>
	§	
<b>ASARCO LLC, et al.,</b>	§	<b>Chapter 11</b>
	§	
<b>Debtors.</b>	§	<b>Jointly Administered</b>
	§	

---

**PROFFER OF JEFFREY ZELIKSON IN SUPPORT OF  
DEBTOR'S SETTLEMENT AGREEMENT REGARDING  
THE SOUTHEAST MISSOURI (SEMO) SITES**

1. My name is Jeffrey Zelikson. In this proffer, I will refer to ASARCO LLC as "ASARCO" or the "Company." This is my testimony in support of ASARCO's Motion Approving Settlement Agreement Among ASARCO LLC, the United States, the State of Missouri, The Doe Run Company, and DR Land Holdings LLC Regarding the Southeast Missouri (SEMO) Sites. I will refer to this motion as the "SEMO Settlement Motion."

2. I am a Director at LECG, an international economic and management consulting firm. I have a B.S. in Mechanical Engineering from the City University of New York and completed graduate course in mechanical engineering at the Stevens Institute of Technology. I am a registered Professional Engineer in New York and New Jersey.

3. I was employed by the USEPA at regional offices in New York and San Francisco for nearly 25 years and as the State of New Jersey's chief water resource official in the 1970s. While Director of the Hazardous Waste Management Division for USEPA Region IX, I oversaw the investigation and cleanup of more than 125 Superfund sites and was ultimately responsible for assuring that compliance was achieved with the NCP in a cost-effective manner. Complete copies of my resume and my Civil Rule 26(A)(2)(B) disclosure are contained in Appendix A-1 of the Expert Report of Jeffrey Zelikson and Richard Lane White dated May 4, 2007 ("Overview Report") (**Exhibit 20**).

### **METHODOLOGY OF ANALYSIS**

4. I have developed an estimate of the total response costs at the SEMO Sites using probabilistic analysis.<sup>1</sup> To determine the total response costs, I included past costs associated with previous response actions and evaluated future potential response costs. Probabilistic cost analysis yields a total expected net present value (“NPV”) cost for response actions equal to \$60.29 million for the SEMO Sites. This total consists of \$42.76 million for the Madison County Site, \$11.74 million for the Big River/Federal Site \$0 for the West Fork Mine, \$0 for Sweetwater Mine, and \$5.79 million for Glover Smelter.<sup>2</sup>

5. My opinions are set out in more detail in the Overview Report and the Expert Report of Jeffrey Zelikson and Richard Lane White on Behalf of ASARCO LLC, July 27, 2007, Appendix B-15, SEMO Site (Madison County/Catherine Mine, Big River/Federal Mine Tailings (St. Francois County), West Fork Mine, Sweetwater Mine, and Glover Smelter) (“Opening Report”) (**Exhibit 22**).

6. The Proffer of Richard Lane White (“White Proffer”) discusses the application of appropriate allocable shares for each element of the SEMO Site and applies those allocable shares to the site response costs discussed herein. Both the pre-share response cost estimates I discuss and the potential allocable shares assigned to the Debtor discussed by Mr. White are necessarily components in considering the Debtor’s settlements.

---

<sup>1</sup> In my expert reports, I grouped the relevant Sites in the following manner: (1) Madison County/Catherine Mine; and (2) Big River/Federal Mine Tailings (St. Francois County). However, ASARCO, Inc., in its March 24, 2008 Limited Objection, treated the Big River/Federal Mine Tailings (St. Francois County) Site as two different Sites. Nevertheless, for the purpose of continuity with my expert reports, I will regard the Sites as follows: the Big River Mine Tailings/Federal Mine Tailings Site (“Big River/Federal Site”); and the Madison County Mines Site (“Madison County Site”).

<sup>2</sup> My \$60.29 million estimate can be broken down as follows: (1) \$42.76 million for Madison County (\$22.82 million in past response costs, \$18.20 million in future response costs, and \$1.74 million in agency oversight costs); (2) \$11.74 million for Big River/Federal (\$1.44 million in past response costs, \$9.08 million in future response costs, and \$1.22 million in agency oversight costs); and (3) \$5.79 million for Glover (\$5.04 million for future response costs and \$0.75 million for agency oversight costs).

**MADISON COUNTY SITE**

7. The United States Environmental Protection Agency (“EPA”) has been primarily concerned with human exposure to mining wastes in Fredericktown and the surrounding areas. Consequently, the agency conducted time-critical removal actions to remove lead-contaminated soils and mine debris from residences in Fredericktown and elsewhere in Madison County. While initial remedial actions have taken place for residences with lead levels above 1,200 parts per million (“ppm”), EPA is planning that additional residences will need to be addressed to reach the remedial cleanup level of 400 ppm. EPA also is conducting ongoing remedial investigations and feasibility studies (“RI/FS”) in Madison County. There are two areas of the Madison County Site potentially attributable to ASARCO that will require remediation: 1) the residential yards in Madison County above 400 ppm in lead; and 2) the Catherine Mine.

8. Investigation/Studies. Prior to initiation of any potential remedial action, additional studies and investigations would be required at the Site to delineate areas requiring remedial action and to select appropriate remedies consistent with the National Contingency Plan (“NCP”). While a Feasibility Study for the Madison County Site has recently been completed, some additional studies and investigations are likely to occur. My cost estimate for any additional studies and investigations at the Madison County Site is \$250,000.

9. Remedial Action #1. Pursuant to the Draft OU-3 Interim Feasibility Study for Residential and Public Area Lead Contaminated Soils for the Madison County Mine Site (“FS”), I have determined that there is a certainty (100% probability) that the following remedy will be implemented for 1,059 residential yards in Madison County as identified in the FS, from

Site was \$42.76 million and the Government's estimate was \$71.06 million. The settlement for the Madison County Site is \$12.68 million.

**BIG RIVER/FEDERAL SITE**

14. There are two areas of the Big River/Federal Site potentially attributable to ASARCO that will require remediation: 1) the residential yards in St. Francois County above 400 ppm in lead due to the possible migration of material from the Federal Mine to residential yards; and 2) the area in St. Joe Park occupied by the Federal Mine tailings as outlined in the 2007 Engineering Evaluation/Cost Analysis ("EE/CA").

15. Remedial Action #1. Pursuant to an Administrative Order on Consent ("AOC") between The Doe Run Company ("Doe Run") and EPA, Doe Run is sampling residential properties within 500 feet of chat piles and 1,000 feet of former smelter sites in St. Francois County. Yards containing contamination above 400 ppm will be remediated. Based upon Doe Run's findings and expected schedule, I estimate that approximately 190 yards are still in need of remediation at a cost of \$28,563 per yard. I have assigned 100% probability that these remaining 190 residential yards will be remediated at a rate of 60 properties per year, *i.e.*, 2007 to 2010. In addition, community education costs of \$100,000 per year for the duration of the residential cleanup work will need to be taken into account. Consequently, my cost analysis for the residential yard remediation yields a total expected net present value cost of \$4.15 million.

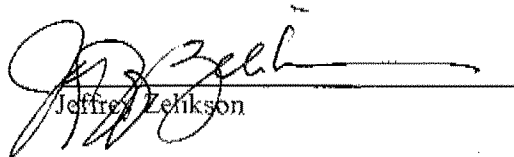
16. Remedial Action #2. Analysis of chat samples from the Federal Mine tailings show elevated levels of lead, cadmium, and zinc. Doe Run is conducting investigations and interim remedial actions at the Federal Mine portion of the site pursuant to the December 1996 participation agreement between ASARCO and Doe Run. Pursuant to this work, an

1-01-1995 0:12AM FROM

P. 2

Case 05-21207 Document 7636 Filed in TXSB on 05/08/2008 Page 10 of 10

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 8<sup>th</sup> day of May 2008 at Palo Alto, CA

  
Jeffrey Zerkson

# EXHIBIT 7



**U.S. Department of Justice**

**Environment and Natural Resources Division**

*Environmental Enforcement Section  
P.O. Box 7611  
Washington, DC 20044-7611*

*Telephone (202) 514-5409  
Facsimile (202) 616-6584*

July 29, 2006

**BY OVERNIGHT MAIL**

**ASARCO LLC  
c/o The Trumble Group LLC  
4 Griffin Rd, North  
Windsor, CT 06095-1511**

**Re: In re ASARCO LLC Case No. 05-21207 (Bankr. S.D. Tex.)**

**Gentlemen and Ladies:**

In accordance with the Court's Orders in the above-referenced case, enclosed please find an original copy of two Proofs of Claim of the United States in the above-referenced cases titled: 1) Supplemental Proof of Claim of the United States on Behalf of the United States Department of the Interior and the Department of Agriculture, Against ASARCO, LLC; and 2) Supplemental Proof of Claim of the United States on Behalf of the United States Environmental Protection Agency, the Department of Agriculture, the United States Department of the Interior, and the United States Section of the International Boundary and Water Commission against debtor ASARCO, LLC ("ASARCO") Against ASARCO, LLC, Please file and docket these Proofs of Claim. If you have any questions, please do not hesitate to call me. Thank you for your assistance.

Sincerely,

**David L. Dain  
Senior Attorney  
U.S. Department of Justice  
Environment and Natural Resources Div.  
Environmental Enforcement Section  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 2004  
(202) 514-3644**

9019SEMO Ex.052.0059

ASARCOSEMO00004529

ED\_000859\_00001362-00186



UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF TEXAS		PROOF OF CLAIM
Name of Debtor <b>ASARCO, LLC</b>	Case Number <b>05-21207</b>	THIS SPACE IS FOR COURT USE ONLY
<b>NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.</b>		
Name of Creditor (The person or other entity to whom the debtor owes money or property): <b>United States of America on behalf of the U.S. Environmental Protection Agency, Dept. of Agriculture, Dept. of the Interior, and the International Boundary and Water Commission</b> Name and Address where notices should be sent: <b>David L. Bain</b> <b>United States Dept. of Justice/ENRD/EES</b> <b>P.O. BOX 7611 - BEN FRANKLIN STATION</b> <b>Washington, DC 20044-7611</b> Telephone Number: <b>(202) 514-3644</b>	<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.	
Account or other number by which creditor identifies debtor:	Check here if <input type="checkbox"/> replaces this claim <input type="checkbox"/> amends a previously filed claim, dated: _____	
<b>1. Basis for Claim</b> <div style="display: flex; flex-wrap: wrap;"> <div style="width: 33%;"> <input type="checkbox"/> Contribution, Indemnity or Guaranty  <input checked="" type="checkbox"/> Environmental  <input type="checkbox"/> Equipment Financing  <input type="checkbox"/> Contract  <input type="checkbox"/> Expenses  <input type="checkbox"/> Goods sold             </div> <div style="width: 33%;"> <input type="checkbox"/> Goods Purchased  <input type="checkbox"/> Letters of Credit or Surety Bonds  <input type="checkbox"/> Litigation  <input type="checkbox"/> Long Term Disability  <input type="checkbox"/> Mechanic's Liens  <input type="checkbox"/> Money Loaned             </div> <div style="width: 33%;"> <input type="checkbox"/> Personal Injury / Wrongful Death  <input type="checkbox"/> Officer Indemnity  <input type="checkbox"/> Other  <input type="checkbox"/> Other Financing  <input type="checkbox"/> Pension Insurance  <input type="checkbox"/> Professional Fees             </div> <div style="width: 33%;"> <input type="checkbox"/> Reclamation Notices  <input type="checkbox"/> Refund  <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a)  <input type="checkbox"/> Taxes  <input type="checkbox"/> Trade Payables  <input type="checkbox"/> Unknown             </div> <div style="width: 33%;"> <input type="checkbox"/> Wages, salaries, and compensation (fill out below)              Your SS# _____              Unpaid compensation for services performed from _____ to _____  <input type="checkbox"/> Collectively bargained obligations  <input type="checkbox"/> Worker's Compensation             </div> </div>		
<b>2. Date debt was incurred:</b> <u>See Attached</u>		<b>3. If court judgment, date obtained:</b> <u>See Attached</u>
<b>4. Total Amount of Claim at Time Case Filed:</b> \$ <u>See Attached</u> <u>See Attached</u> <u>See Attached</u> <u>See Attached</u> <div style="display: flex; justify-content: space-around; font-size: small;"> <span>(unsecured)</span> <span>(secured)</span> <span>(priority)</span> <span>(Total)</span> </div> <p>If all or part of your claim is secured or entitled to priority, also complete Item 5 or 7 below.</p> <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
<b>5. Secured Claim.</b> <input checked="" type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff).  Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input checked="" type="checkbox"/> Other <u>See Attached</u>  Value of Collateral: \$ <u>See Attached</u> Amount of arrearage and other charges at the time case filed included in secured claim, if any: \$ _____	<b>7. Unsecured Priority Claim.</b> <input type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ _____ Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,000), * earned within 180 days before the filing of the bankruptcy petition or cessation of the debtor's business, which ever is earlier - 11 U.S.C. § 507(a)(3). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Up to \$2,225* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6). <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507 (a)(____).  <i>* Amounts are subject to adjustment on 4/1/07 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment. \$10,000 and 180-day limits apply to cases filed on or after 4/20/05. Pub. L. 109-8.</i>	
<b>6. Unsecured Nonpriority Claim</b> \$ <u>See Attached</u> <input checked="" type="checkbox"/> Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or only part of your claim is entitled to priority.		THIS SPACE IS FOR COURT USE ONLY
<b>8. Credits:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.		
<b>9. Supporting Documents:</b> Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. <b>DO NOT SEND ORIGINAL DOCUMENTS.</b> If the documents are not available, explain. If the documents are voluminous, attach a summary.		
<b>10. Date-Stamped Copy:</b> To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		THIS SPACE IS FOR COURT USE ONLY
Date <b>07/28/2006</b>	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any)  <b>David L. Bain</b> <b>Senior Attorney, U.S. Dept. of Justice/ENRD/EES</b>	

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

DAL02:459017.1

9019SEMO Ex.052.0001

ASARCOSEMO00004471

ED\_000859\_00001362-00187

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
(Corpus Christi Division)**

<b>In re</b>	§	<b>Case No. 05-21207</b>
	§	
<b>ASARCO, LLC, et al.</b>	§	<b>Chapter 11</b>
	§	
<b>Debtors</b>	§	<b>Jointly Administered</b>
	§	

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**SUPPLEMENTAL PROOF OF CLAIM OF THE UNITED STATES ON  
BEHALF OF THE UNITED STATES ENVIRONMENTAL PROTECTION  
AGENCY, THE DEPARTMENT OF AGRICULTURE, THE DEPARTMENT OF  
THE INTERIOR, AND THE UNITED STATES SECTION OF THE INTERNATIONAL  
BOUNDARY AND WATER COMMISSION, AGAINST ASARCO, LLC**

The United States files this Supplemental Proof of Claim at the request of the U.S. Environmental Protection Agency ("EPA"), the Forest Service of the United States Department of Agriculture ("USDA"), the Bureau of Indian Affairs of the United States Department of the Interior, and the United States Section of the International Boundary and Water Commission against debtor ASARCO, LLC ("ASARCO") for: (1) response costs incurred and to be incurred by the United States under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601-9675 at various sites as set forth herein and (2) for civil penalties as set forth herein. In addition, with respect to equitable remedies that are not within the Bankruptcy Code's definition of "claim," 11 U.S.C. § 101(5), this proof of claim is only filed in protective fashion.

On February 16, 2006 the United States Filed its Initial Proof of Claim (Secured) of the United States on Behalf of the United States Environmental Protection Agency, Department of Agriculture and Department of Interior ("U.S. Initial Proof of Claim"). All allegations contained therein are incorporated herein by reference. The United States is also separately filing: 1)

Supplemental Proof of Claim of the United States on Behalf of the United States Department of the Interior and the Department of Agriculture, Against ASARCO, LLC, and 2) Proof of Claim of United States of America on Behalf of the Department of the Interior and Certain Indian Landowners.

### **CERCLA LIABILITIES TO EPA**

1. ASARCO is liable to the United States under CERCLA with respect to each of the Sites set forth in paragraphs 2 - 60 below. Each of these Sites is a facility within the meaning of CERCLA. There have been releases or threats of releases of hazardous substances at each of the Sites. Response costs have been and will be incurred by EPA at each of the Sites not inconsistent with the National Contingency Plan ("NCP") promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and set forth at 40 C.F.R. ¶ 300, as amended. ASARCO is liable to take response action under CERCLA at the Sites set forth below, but this Supplemental Proof of Claim is filed in protective fashion only with respect to such liabilities. See e.g., Paragraphs 3, 16, 18, 27-29, 34-38, 40, 45, 47-48, 54, 56, 59, 61, and 62 infra. ASARCO is also liable to reimburse the United States for the costs (plus interest due under 42 U.S.C. § 9607(a)) of actions taken or to be taken by the United States in response to releases and threatened release of hazardous substances at the Sites. Other potentially responsible parties may, along with ASARCO, also be jointly and severally liable to the United States under CERCLA with respect to some of the Sites.

#### **Bunker Hill Superfund Facility/Coeur d'Alene Basin.**

2. This site in northern Idaho was previously identified in the U.S. Initial Proof of Claim. All allegations contained therein are incorporated herein by reference.

and regulatory obligations and requirements under RCRA. See Paragraph 61 supra.

#### **ADDITIONAL CERCLA CLAIMS BY EPA FOR RESPONSE COSTS**

63. ASARCO is liable under CERCLA to reimburse the United States for the costs (plus interest due under 42 U.S.C. § 9607(a)) of actions taken or to be taken by the United States in response to releases and threatened release of hazardous substances at the Sites set forth in paragraphs 64 to 149 below. Each of these Sites is a facility within the meaning of CERCLA. There have been releases or threats of releases of hazardous substances at each of the Sites. Response costs have been and will be incurred by EPA at each of the Sites not inconsistent with the National Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and set forth at 40 C.F.R. ¶ 300, as amended. Other potentially responsible parties may along with ASARCO also be jointly and severally liable to the United States under CERCLA with respect to some of the Sites.

#### **Big River Mine Tailings and Federal Mine Tailings Sites**

64. The Federal Mine Tailings Site is one of the mine waste sites within the St. Francois County Mining Area. The Federal Mine Tailings Site is located in and around St. Joe State Park, near the City of Park Hills in St. Francois County, Missouri.

65. The Big River Mine Tailings Site is a separate Site in St. Francois County and was added to the National Priorities List ("NPL") on October 14, 1992.

66. ASARCO's corporate predecessor, Federal Lead Co., previously owned and operated lead mining and milling operations at the Federal Mine Tailings Site. During this time period, the Federal Lead Co. disposed of mining and milling wastes including hazardous substances at the Federal Mine Tailings Site by pumping mine and mill tailings across the site. Migration of mine waste including hazardous substances from the Federal Mine Tailings Site has

occurred via wind erosion, storm water runoff, and mechanical means such as hauling or track-out. Mine waste including hazardous substances from the Federal Mine Tailings Site has migrated to residential yards, surface waters and sediments, which are being addressed as part of the Big River area-wide remedial and removal activities.

67. ASARCO is jointly and severally liable at these Sites under Section 107(a) of CERCLA, 42 U.S.C. 9607(a) because ASARCO is a former owner/operator of the Federal Mine Tailings facility at the time of disposal of hazardous substances, and/or is a person who arranged for disposal of a hazardous substance at the Site.

68. ASARCO, The Doe Run Resources Corporation, and the State of Missouri are parties to an Administrative Order on Consent ("AOC"), Docket No. VII-97-F-0009, with EPA to conduct an Engineering Evaluation/Cost Analysis ("EE/CA") for the Federal Site. In addition, ASARCO and Doe Run are parties to an AOC, Docket No. VII-97-F-0002, with EPA that requires them to conduct a Remedial Investigation and Feasibility Study ("RI/FS") addressing impacts from all of the piles in St. Francois County to soil, surface water and sediment. See Paragraph 61 supra. In addition, Doe Run is a party to an AOC, Docket No. CERCLA-7-2004-0167, requiring Doe Run to address residential yards with elevated lead levels around piles in St. Francois County.

69. EPA has incurred unreimbursed response costs, not inconsistent with the NCP, through June 10, 2006 at the Federal Mine Tailings Site of approximately \$238,321.

70. EPA estimates that it will in the future incur response costs at the Federal Mine Tailings Site related to the covering the exposed tailings and stabilizing the tailings that have washed past the tailings dam in the amount of \$8,000,000.

71. EPA has incurred unreimbursed response costs, related to the area-wide remedial

and removal activities, not inconsistent with the NCP, through June 10, 2006 at the Big River Mine Tailings Site of approximately \$936,750.

72. EPA estimates that it will in the future incur response costs at the Big River Mine Tailings Mine Site related to the remediation of residential yards, surface waters and sediments in the amount of \$10,000,000 - \$20,000,000.

73. ASARCO is jointly and severally liable to the United States for these Sites in the above stated amounts (plus interest due under 42 U.S.C. § 9607(a)). These amounts do not include the AOCs referred to above, with which ASARCO is also required to comply.

**Cherokee County Superfund Site**

74. This site located in Kansas was previously identified in the U.S. Initial Proof of Claim. All allegations contained therein are incorporated herein by reference. In that Initial Proof of Claim the United States set forth a claim in the amount of \$27,373 for response costs incurred through January 18, 2006.

75. In addition to the response costs identified in the U.S. Initial Proof of Claim, as to the Baxter Springs (OU3) and the Treece (OU4) subsites for response actions to surficial wastes at the Baxter Springs and Treece subsites and impacted sediments within Tar Creek, EPA estimates that it has incurred or will incur additional and future response costs, not inconsistent with the NCP, in the amount of \$8,000,000.

76. In addition to the response costs identified in the U.S. Initial Proof of Claim, as to the Spring River (OU2) subsite for stream and tributary and other dredging at points at and below ASARCO's initial connection with affected waters, EPA estimates that it has incurred or will incur substantial additional and future response costs, not inconsistent with the NCP, at the Site. Numerous investigations and related estimates related to the costs of cleanup stream,

surface mining waste cleanups. EPA estimates that it may cost EPA or the jointly and severally liable parties approximately \$60 million to perform the required work at OU1. However, EPA does not claim that ASARCO is jointly and severally liable for all costs of cleanup associated with the OU-1 cleanups. Based on EPA estimates, ASARCO's total response costs liability for OU1 future costs is, at least \$18,490,000.

111. OU-5 includes surface water and sediment cleanups in the Spring River Watershed. EPA estimates that approximately 120,000 linear feet of this stream cleanup is downstream from ASARCO's former properties. Based on EPA estimates, ASARCO's total response costs liability for OU-5 future costs associated with that 120,000 linear feet is, at least \$9,600,000.

112. EPA also estimates that there will be additional costs associated with the cleanups at Ous 1 and 5 and estimate those costs to be \$4,494,400.

113. Thus, ASARCO's liability for OUs 1 and 5 for this Site is the total amount of \$32,584,400 (plus interest due under 42 U.S.C. § 9607(a)).

#### **Madison County Site**

114. The Madison County Mines Site is located in Madison County, Missouri. The City of Fredericktown is centrally located in the county, approximately 85 miles south of St. Louis. There are approximately 1,700 single family homes in Fredericktown. Historic mining areas surround the city.

115. The Madison County Site includes a number of tailings and chat piles, one of which is known as the Catherine Mine subsite. Waste has migrated from the piles via wind erosion, water erosion, and mechanical movement within Madison County and the City of Fredericktown. The hauling of chat and tailings occurred and mine waste was used in the yards,

driveways, and on the city's streets. These practices have resulted in residential properties with levels of lead exceeding EPA's time-critical removal level of 1,200 ppm.

116. The Catherine Mine subsite is currently owned by Delta Asphalt Co. but was previously owned and operated by ASARCO or its corporate predecessors. ASARCO is jointly and severally liable at this Site under Section 107(a) of CERCLA, 42 U.S.C. 9607(a), because ASARCO is a former owner/operator of the facility at the time of disposal of hazardous substances at the Site and/or is a person who arranged for disposal of a hazardous substance at the Site.

117. Currently, EPA has fund lead activities ongoing, which include time-critical removal actions to address contaminated residential yards within and around Fredericktown, and remedial investigation activities to determine the nature and extent of soil, surface water, sediment and groundwater contamination. The Catherine Mine subsite includes EPA's soil repository, which contains lead contaminated soils excavated from residential yards pursuant to EPA's removal activities. The Madison County Mines Site was added to the NPL on September 29, 2003.

118. EPA has incurred response costs not consistent with the NCP through June 10, 2006 of \$22,821,096.

119. EPA estimates that it will in the future incur additional response costs at the Madison County Site related to further investigations, remediation of residential yards, surface waters, and sediments, stabilization of piles, and repository construction costs, not inconsistent with the NCP, at the Madison County Site in the amount of \$35,946,986.

120. ASARCO is jointly and severally liable to the United States for this Site for the above referenced costs (plus interest due under 42 U.S.C. § 9607(a)).



# EXHIBIT 8



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

JEREMIAH W. (JAY) NIXON  
ATTORNEY GENERAL

P.O. Box 899  
(573) 751-3321

July 31, 2006

ASARCO LLC  
c/o The Trumbull Group, L.L.C.  
4 Griffin Road North  
Windsor, CT 06095-1511

RE: ASARCO Bankruptcy

Dear Ladies and Gentlemen:

Please find the Proof of Claims for the Missouri Department of Natural Resources. Also enclosed is an additional copy of each proof of claim, which we ask that you file stamp and return to us in the self-address stamped envelope.

Thank you for your time and attention in this matter.

Sincerely,

JEREMIAH W. (JAY) NIXON  
Attorney General

*Christie A. Kincannon*  
CHRISTIE A. KINCANNON  
Assistant Attorney General  
(573) 751-8865  
(573) 751-4254 (FAX)

*Peth Whaley*

FORM B10 (Official Form 10) (4/04)

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF TEXAS		PROOF OF CLAIM
Name of Debtor LAQ Canada, Ltd.	Case Number 05-20525	Check Bankruptcy Chapter:  <div style="display: flex; justify-content: space-between;"> <span>7</span> <span>12</span> </div> <div style="display: flex; justify-content: space-between;"> <span>X 11</span> <span>13</span> </div>
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (The person or other entity to whom the debtor owes money or property):  Missouri Department of Natural Resources  Name and address where notices and/or payments should be sent:  Christie A. Kincannon, AAG Attorney General's Office P.O. Box 899 Jefferson City, MO 65102  Telephone number: 573-751-0662. E-mail address: christie.kincannon@ago.mo.gov	<input type="checkbox"/> Check if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check if the address differs from the address on the envelope sent to you by the court.	
Account or other number by which creditor identifies debtor:	Check here if <input type="checkbox"/> replaces this claim <input type="checkbox"/> amends a previously filed claim dated _____	
<b>1. Basis for Claim</b> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Goods Sold  <input type="checkbox"/> Services Performed  <input type="checkbox"/> Money Lent  <input type="checkbox"/> Personal injury/wrongful death  <input type="checkbox"/> Taxes  <input checked="" type="checkbox"/> Other: Natural Resources Damages         </div> <div style="width: 50%;"> <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a)  <input type="checkbox"/> Wages, salaries, and compensation (fill out below)            Last four digits of SS #: _____            Unpaid Compensation for services performed from _____ to _____  <div style="display: flex; justify-content: space-between; font-size: small;"> <span>(date)</span> <span>(date)</span> </div> </div> </div>		
<b>2. Date debt was incurred:</b> Various	<b>3. If court judgment, date obtained:</b>	
<b>4. Total Amount of Claim at Time Case Filed:</b> \$ <u>Estimated see attached Exhibit A</u> (Claim may be general unsecured unless you complete #5 or #6.) <i>If all or part of your claim is secured or entitled to priority, also complete Item 5 or 7 below.</i> <input type="checkbox"/> Check if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
<b>5. Secured Claim</b> <input type="checkbox"/> Check if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other: _____ Value of Collateral: \$ _____ (Fair market value must be provided or claim may be considered as general unsecured) Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____	<b>7. Unsecured Priority Claim</b> <input type="checkbox"/> Check if you have an unsecured priority claim Amount entitled to priority \$ _____ Specify the priority of the claim below: <input type="checkbox"/> Wages, salaries, or commissions (up to \$4295),* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Up to \$2,225* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6). <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C., § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C., § 507(a)(____). <small>*Amounts are subject to adjustment on 4/1/98 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>	
<b>6. Unsecured Nonpriority Claim:</b> \$ _____ <input type="checkbox"/> Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property security it, or if c) non or only part of your claim is entitled to priority.		THIS SPACE FOR COURT USE ONLY <div style="font-size: 2em; font-weight: bold; text-align: center;">RECEIVED</div> <div style="text-align: center;">             AUG 01 2006              8/1/06  <b>THE TRUMBULL GROUP</b>              MK           </div>
<b>8. Credits</b> The amount of all payments on this debt have been credited and deducted for the purpose of making this proof of claim. <b>9. Supporting Documents:</b> Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. Do NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary. <u>Additional information provided upon request.</u> <b>10. Date-Stamped Copy:</b> To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		
Date  4/31/06	Electronically sign and affix your title, if any, of the creditor or other person authorized to file this claim. <div style="text-align: center;">   <b>Frances Kline</b> </div>	
Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C., " 152 and 3571.		

UPRR-000177

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**EXHIBIT A-NRD**  
**Trustee Restoration Estimates for**  
**ASARCO Bankruptcy**

The Missouri Department of Natural Resources supports its claim with this summary of the activity giving rise to the claim as well as estimates relating to the cost associated with rectifying the environmental damage associated with Asarco's activity in Missouri. Because the documentation supporting this claim is so voluminous (including but not limited to site characterizations, descriptions of contamination and detailed calculations), it is not being filed with the claim. However, it can and will be produced upon request. Additionally, MDNR reserves the right to amend this claim.

Pursuant to § 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9607(a), States may recover damages for injury to the natural resources of the States from parties who are liable for such damages. The Natural Resource Trustee(s) for a State may assess and then determine the damage resulting from the release of a hazardous substance from a facility and then seek to recover those damages. In Missouri, the Governor has designated the Director of the Missouri Department of Natural Resources (MDNR) as the Natural Resource Trustee for the State.

The Missouri Clean Water Law, §644.096, RSMo also authorizes the MDNR to seek damages for injury to natural resources of the state caused by any violation of the Missouri Clean Water Law, Chapter 644, RSMo.

The Missouri Department of Natural Resources has been coordinating as co-trustee, pursuant to a state-wide Memorandum of Understanding, with the U.S. Department of the Interior (DOI) in the assessment of damages for injuries to natural resources for Catherine Mine, Madison County; Federal Mine Tailings site, St Francois County; Newton County Mine Tailings Superfund site, Newton County; Oronogo-Duenweg Superfund site, Jasper County; Sweetwater Mine and West Fork Mine Mill Complex, Reynolds County; and Glover Smelter, Iron County. The MDNR will coordinate the recovery of damages for, and restoration of, any such resources with DOI to eliminate concerns regarding double recovery. MDNR and DOI will file separate proofs of claim in the Asarco bankruptcy for damages associated with injury to natural resources within their overlapping and separate trusteeship. The separate proofs of claim do contain overlapping resources with damages calculated for restoration of the same resources, in some cases. The primary differences between the claims relate to the estimates for groundwater and mussel production/survey estimates. The state Trustee calculated groundwater damages based on drinking water while DOI based its estimate on groundwater as a habitat. The state claim reflects mussel

production/survey damages in more locations than DOI's. This difference is because DOI only claims for threatened and endangered mussel species while the state covers all species of mussels.

The damage assessment estimates below were determined by calculating primarily on-site restoration costs. It should be noted that this approach does not take into account past lost use or interim lost use. Both lost use components are to be considered a part of a Natural Resource Damage Claim as identified by the DOI regulations. Groundwater was calculated using the New Jersey formula, which establishes the magnitude of the restoration necessary to compensate for the injury. This formula under estimates the value because it does not include past loss – only current and future. Not including the lost use components provides a lower claim than allowable.

The Trustees recognize that the terrestrial, surface water, sediment and groundwater contamination may not be exclusive to Asarco and other mining companies may provide additional inputs of hazardous substances associated with mining to these media. However, joint and several liability allows the Trustees to develop a total claim for injuries. It is the responsibility of the mining companies to develop an allocation scheme and obtain contribution from other responsible parties to reimburse their costs.

Asarco's liability results from its activity as an owner/operator at mining and/or disposal sites in the state of Missouri at the time of disposal of hazardous substances and/or its status as the legal successor to American Smelting & Refining Company, American Smelters Securities Company, Federal Mining & Smelting Company, and Federal Lead Company. Such disposal of hazardous waste resulted in the injury, destruction and loss of resources at the seven Missouri sites. The injury resulted from higher than allowed concentrations of, among other elements, cadmium, copper, lead and zinc.

As shown in the following is a summary of the natural resource damages for the seven Missouri sites, release of hazardous substances within the state resulted in injury to soil, surface water, groundwater and terrestrial habitats, including that of mussels and water fowl.

Jasper County - Oronogo/Duenweg Lead Mining Belt (Jasper County Site)			
Summary of Damages			
	Terrestrial Habitats	\$11,284,200	
	Surface Water	\$2,399,500	

	Groundwater	\$96,097,142	
	Restoration Planning/Implementation Oversight	\$326,560	
	Operation and Maintenance	\$11,791,120	
	Remedial Action Costs	-\$13,616,150	
	Adjusted Grand Total		\$108,282,372
<b>Newtown County - Newton County Mine Tailings Superfund Site (Newton County Site)</b>			
	Terrestrial Habitats	\$9,172,600	
	Surface Water	\$2,247,300	
	Groundwater	\$157,400,490	
	Restoration Planning/Implementation Oversight	\$326,560	
	Operation and Maintenance	\$11,791,120	
	Remedial Action Costs	-\$900,000	
	Adjusted Grand Total		\$180,038,070
<b>Madison County - Catherine Mine</b>			
	Terrestrial Habitats	\$2,852,010	
	Surface Water	\$1,424,800	
	Groundwater	\$934,588	
	Restoration Planning/Implementation Oversight	\$326,560	
	Operation and Maintenance	\$4,937,580	
	Remedial Action Costs	-\$453,900	
	Adjusted Grand Total		\$10,021,638
<b>St. Francois County - Federal Mine Tailings</b>			
	Terrestrial Habitats	\$29,871,900	
	Surface Water	\$3,096,050	
	Groundwater	\$0	
	Restoration Planning/Implementation Oversight	\$326,560	
	Operation and Maintenance	\$28,940,120	
	Remedial Action Costs	-\$2,268,000	
	Adjusted Grand Total		\$59,966,630

<b>Reynolds County - Sweetwater Mine and Mill Facility</b>		
Terrestrial Habitats	\$18,585,900	
Surface Water	\$70,000	
Groundwater	\$2,972,445	
Restoration Planning/Implementation Oversight	\$217,707	
Operation and Maintenance	\$7,149,913	
Remedial Action Costs	\$0	
Adjusted Grand Total		\$28,995,965
<b>Reynolds County - West Fork Mine Mill Complex</b>		
Terrestrial Habitats	\$5,532,900	
Surface Water	\$68,250	
Groundwater	\$844,439	
Restoration Planning/Implementation Oversight	\$217,707	
Operation and Maintenance	\$7,149,913	
Remedial Action Costs	\$0	
Adjusted Grand Total		\$13,813,209
<b>Iron County - Glover Smelter</b>		
Terrestrial Habitats	\$1,957,575	
Surface Water	\$33,250	
Groundwater	\$578,988	
Restoration Planning/Implementation Oversight	\$217,707	
Operation and Maintenance	\$7,149,913	
Remedial Action Costs	-\$3,690,260	
Adjusted Grand Total		\$6,247,173
<b>GRAND TOTAL</b>		<b>\$407,365,057</b>

In addition to these damages, the release of hazardous substances will require restoration of stream sediment contamination including but not limited to

sediment removal, sediment replacement, and bank and channel restoration costs for each of the seven Missouri sites. Simply described, this will require removal of contaminated material, which would be disposed of in on-site pits. Uncontaminated sediment would be replaced into the stream to retain the geomorphically stable sediment load in the stream. The cost varies by site and amount of area contaminated.

At the Madison County-Catherine Mine, approximately, 4 miles of waterway are effected requiring restoration of 49,867 cubic yards at a cost of \$103.18 per yard.

In St Francois County-Federal Mine Tailings site, approximately 90 miles of effected area translates to 3,085,867 cubic yards of replaced sediment at an approximate cost of \$64.01 per yard. The Reynolds County-Sweetwater Mine and Mill Facility requires repair of 4 miles or 24,933 cubic yards at an approximate cost of \$130.22 per yard. The West Fork Mine Mill Complex, also located in Reynolds County has damage to 3.9 miles of sediment or 57,000 cubic yards. The cost for cubic yard for this area approximates \$94.66.

At the Jasper County Lead Superfund Site, the total cost of sediment removal and restoration for Turkey Creek, Center Creek, Short Creek and associated tributaries is based on 910,360 cubic yards of sediment (at an average depth of 1.5 feet) removed from 55.7 stream miles and replaced to maintain geomorphic stability in the stream at a cost of \$75.44 a cubic yard.

At the Newton County Lead Superfund Site, the total cost of sediment removal and restoration for Shoal Creek, Dry Branch, Gum Springs Branch and Wolf Creek is based on 838,567 cubic yards of sediment (at an average depth of 1.5 feet) removed from 47 stream miles and replaced to maintain geomorphic stability in the stream at a cost of \$75.44 a cubic yard.

At the Glover Smelter Site, the total cost of sediment removal and restoration for Big Creek and Scoggins Branch is based on 65,707 cubic yards of sediment (at an average depth of 1.5 feet) removed from 1.9 stream miles and replaced to maintain geomorphic stability in the stream at a cost of \$104.79 per yard.

Also, the state has incurred costs to assess the injuries to its natural resources. The assessment costs incurred to date are attached.



# EXHIBIT 9

NEWFIELDS

March 1, 2002

Bruce Morrison  
U.S. EPA Region VII  
901 N. 5<sup>th</sup> Street  
Kansas City, KS 66101

**Re: Submission of Draft Focused Remedial Investigation for Mined Areas in St. Francois County, Missouri**

Dear Bruce:

On behalf of The Doe Run Company, please find attached two copies of the Draft Focused Remedial Investigation (RI) for Mined Areas in St. Francois County, Missouri. This document is a major deliverable listed in the Statement of Work attached to the Administrative Order on Consent, United States Environmental Protection Agency Docket No. VII-97-F-0002, dated January 29, 1997.

The Summary of Deposition Study, Federal Tailings Flat, Old Lead Belt, Missouri, prepared by TRC Environmental Corporation, is submitted with this Draft Focused RI. This study was conducted in accordance with an agreement between EPA and The Doe Run Company.

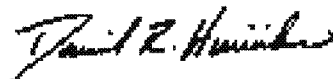
Attached to this letter are NewFields' written responses to EPA comments on the Human Health Risk Assessment assumptions, dated December 21, 2001. Most of the comments were addressed and are incorporated in Section 5 of the Draft Focused RI, with the exception of the first comment requesting the addition of a second occupational receptor, "Outdoor Maintenance Worker". While we agree that this receptor may exist, we are unclear as to the value of the additional receptor. All of the site media to which the "Outdoor Maintenance Worker" would be exposed are evaluated using other receptors whose exposure is greater or whose population is more sensitive to the exposure (i.e., resident or children). Therefore, we would like to discuss the need for inclusion of this additional occupation receptor.

The Draft Focused RI has been reviewed by Mr. John E. Carter, P.E., a registered Professional Engineer in the State of Missouri. Mr. Carter's stamp appears on the inside cover of the report.

If you have any questions please contact me at (303) 294-9298.

Sincerely,

NEWFIELDS, INC.



David R. Hinrichs  
Project Manager

**Attachments**

cc: Robert Hinkson, MDNR - 1 copy  
Karen Bataille, MDOC - 1 copy

NEWFIELDS

John Murrelle Plaza ~ 717 17th Street ~ Suite 3450  
Denver, Colorado 80202  
303.294.0950 tel ~ 303.294.9220 fax  
www.newfields.com

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**MAR 5 2002**  
**SUPERFUND DIVISION**

SEMO-007355  
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**FOCUSED REMEDIAL INVESTIGATION  
FOR MINED AREAS IN  
ST. FRANCOIS COUNTY, MISSOURI**

**RECEIVED  
MAR 5 2002  
SUPERFUND DIVISION**

**March 1, 2002**

**NEWFIELDS**

717 17<sup>th</sup> Street, Suite 1450  
Denver, Colorado 80202-3308



*John E. Carter*  
02/27/02

SEMO-007356  
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**Focused Remedial Investigation for Mined Areas  
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March 1, 2002

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## **FOCUSED REMEDIAL INVESTIGATION FOR MINED AREAS IN ST. FRANCOIS COUNTY, MISSOURI**

### **1.0 INTRODUCTION**

This report, Focused Remedial Investigation (Focused RI) for Mined Areas in St. Francois County, Missouri (the Site), has been prepared by NewFields on behalf of The Doe Run Company. The Doe Run Company has agreed to characterize the Site and consider remedial alternatives pursuant to an Administrative Order on Consent (AOC), United States Environmental Protection Agency (EPA) Docket No. VII-97-F-0002, dated January 29, 1997. The RI/FS Work Plan (Dames & Moore 1996c), which is incorporated by reference in the AOC as Appendix E, requires submittal of a Focused RI, Ecological Risk Assessment (ERA), Human Health Risk Assessment (HHRA) and a Feasibility Study. This report fulfills a deliverable requirement of the Work Plan.

The first recorded mining in St. Francois County occurred between 1742 and 1762. The important discoveries of disseminated lead in the Bonne Terre, Leadwood, and Flat River areas occurred in 1864. The introduction of the diamond drill in 1869 facilitated the discovery of additional reserves and output from the mines increased dramatically in the late 1800s. Mine output from St. Francois County peaked in 1942 when the concentrate equivalent of 197,430 tons of lead was produced. Mining ceased in the county in 1972 with the closing of St. Joe Lead Company's Federal mine. The AOC identifies eight former mines in St. Francois County that comprise the Site. These areas are shown on Figure 1-1 and are listed below:

- Desloge
- National
- Leadwood
- Rivermines (aka Elvins)
- Bonne Terre
- Federal/St. Joe State Park
- Doe Run
- Hayden Creek

In 1995, Fluor Daniel, Inc., on behalf of St. Joe Minerals Corporation, completed an Initial RI (Fluor Daniel 1995a) for the sites listed above. The Initial RI evaluates the extensive data that had been collected in St. Francois County and summarizes the history of mining activities. Since much of the work of characterizing the nature and extent of environmental media at the Site had been completed, the Focused RI did not require extensive data collection.

# EXHIBIT 10



<http://www.epa.gov/superfund/sites/npl/nar1336.htm>

Last updated on November 27, 2012

## National Priorities List (NPL)

You are here: [EPA Home](#) [Superfund](#) [Sites](#) [National Priorities List \(NPL\)](#) NPL Site Narrative for Big River Mine Tailings/St. Joe Minerals Corp.

# NPL Site Narrative for Big River Mine Tailings/St. Joe Minerals Corp.

## BIG RIVER MINE TAILINGS/ST. JOE MINERALS CORP. Desloge, Missouri

**Federal Register Notice:** October 14, 1992

**Conditions at Proposal (February 7, 1992):** The Big River Mine Tailings/St. Joe Minerals Corp. site in Desloge, St. Francois County, Missouri, was used for disposal of lead mine tailings during 1929-58. The site is in a former mining region about 70 miles south of St. Louis often referred to as the "Old Lead Belt." The region (approximately 110 square miles) contains numerous tailings ponds and piles.

St. Joe Minerals Corp. operated the site, disposing lead-, cadmium-, and zinc-rich mine tailings over approximately 600 acres in a rural area bordered on three sides by Big River. In 1972, the company donated 502 acres of the land to St. Francois County, which then leased the land to St. Francois County Environmental Corp. (SFCEC). Since 1973, SFCEC has operated a sanitary landfill on approximately 60 acres of the southern section of the tailings pile.

EPA learned of the site in 1977, when an estimated 50,000 cubic yards of tailings slumped into the Big River during a heavy rain. After the collapse, the Missouri Department of Conservation detected elevated lead levels in bottom-feeding fish and advised local residents not to eat the fish. In 1981, St. Joe Minerals attempted to stabilize the tailings. In 1982, an extensive investigation conducted by the Columbia National Fisheries Research Laboratory detected elevated lead concentrations (5 to 26 micrograms per liter) in the surface water. Elevated lead levels were reported in the bottom-feeding biota. Big River is used for recreational fishing, water-contact recreation, and watering of commercial livestock.

In January 1988, during a site reconnaissance, EPA noted that a strong wind was creating a suspended particulate plume. EPA sampled the tailings pile in January 1988 and July 1990, detecting elevated concentrations of lead, cadmium, and zinc. High-volume air sampling conducted during the 1990 site investigation indicated that wind erosion and airborne dust created a potential hazard for on-site workers, residents, and children at a day care center. Approximately 23,000 people live within 4 miles of the site. People on the site are also exposed to contaminated soil.

**Status (October 1992):** EPA's emergency staff is assessing the site to determine if a removal action is necessary.

For more information about the hazardous substances identified in this narrative summary, including general information regarding the effects of exposure to these substances on human health, please see the Agency for Toxic Substances and Disease Registry (ATSDR) ToxFAQs. ATSDR ToxFAQs can be found on the Internet at [ATSDR - ToxFAQs](http://www.atsdr.cdc.gov/toxfaq/index.asp) (<http://www.atsdr.cdc.gov/toxfaq/index.asp>) or by telephone at 1-888-42-ATSDR or 1-888-422-8737.

# EXHIBIT 11

**NOTICED PARTIES AT CERCLIS SITES (LIST-11), VERSION 1.02**

THIS IS THE \*\* PRODUCTION VERSION \*\* OF THE REPORT

**USER SELECTION OPTIONS**

REGION: ALL  
SITE SELECT CRITERIA: All Sites  
PARTY SELECT CRITERIA: All Parties  
SORT BY: State, Site Name, Party Name  
OUTPUT DESTINATION: SCREEN

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CERCLIS DATABASE TIME: 10:42:54  
VERSION: 1.02

**\*\*PRODUCTION VERSION\*\***  
**U.S. EPA SUPERFUND PROGRAM**  
**CERCLIS**  
Noticed Parties at CERCLIS Sites  
Region 07

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RELEASE THROUGH FOIA

SITE NAME, EPA ID

PARTY NAME	STREET ADDR1	STREET ADDR2	CITY	ST	ZIP
<b>State: Missouri</b>					
<b>BONIFIELD BROTHERS TRUCKING</b>	<b>MOD980861884</b>	<b>NPL STATUS:</b> Not on the NPL	<b>NON-NPL STATUS:</b> Referred to Rmvl - NFRAP		
<b>SYNTEX AGRIBUSINESS, INC.</b>	<b>314 NORTH BROADWAY</b>		<b>ST. LOUIS,</b>	<b>MO</b>	<b>63102</b>
SETTLEMENT DATE: 12/31/1990	CD002	CONSENT DECREE			
<b>SYNTEX CORPORATION</b>					
SETTLEMENT DATE: 12/31/1990	CD002	CONSENT DECREE			
<b>SYNTEX LABORATORIES, INC.</b>					
SETTLEMENT DATE: 12/31/1990	CD002	CONSENT DECREE			
<b>BONNE TERRE MINE TAILINGS</b>	<b>MOD985818236</b>	<b>NPL STATUS:</b> Site is Part of NPL Site	<b>NON-NPL STATUS:</b>		
<b>CITY OF BONNE TERRE</b>	<b>CITY HALL</b>		<b>BONNE TERRE</b>	<b>MO</b>	<b>63628</b>
SETTLEMENT DATE: 09/10/1998	CA002	CONSENT AGREEMENT (ADMINISTRATIVE)			
<b>DOE RUN RESOURCES CORPORATION</b>	<b>1801 PARK 270 DRIVE</b>	<b>SUITE 300</b>	<b>ST. LOUIS</b>	<b>MO</b>	<b>63146</b>
SETTLEMENT DATE: 03/16/2001	AC002	ADMIN ORDER ON CONSENT			
SETTLEMENT DATE: 04/21/2003	AC003	ADMIN ORDER ON CONSENT			
<b>KENNETH &amp; SHIRLEY DAVID</b>	<b>16 WEST COLUMBIA</b>		<b>FARMINGTON</b>	<b>MO</b>	<b>63640</b>
SETTLEMENT DATE: 05/30/1997	CA001	CONSENT AGREEMENT (ADMINISTRATIVE)			
<b>BRISTOL STEEL</b>	<b>MOD106564750</b>	<b>NPL STATUS:</b> Not on the NPL	<b>NON-NPL STATUS:</b> Referred to Rmvl - NFRAP		
<b>BRISTOL STEEL CORPORATION</b>	<b>300 PIEDOMNT AVENUE</b>	<b>P.O. BOX 471</b>	<b>BRISTOL</b>	<b>VA</b>	<b>242030471</b>
SETTLEMENT DATE: 08/10/1990	AC001	ADMIN ORDER ON CONSENT			
<b>SYNTEX (USA), INC.</b>					
SETTLEMENT DATE: 12/31/1990	CD001	CONSENT DECREE			
<b>SYNTEX AGRIBUSINESS, INC.</b>	<b>314 NORTH BROADWAY</b>		<b>ST. LOUIS,</b>	<b>MO</b>	<b>63102</b>
SETTLEMENT DATE: 12/31/1990	CD001	CONSENT DECREE			
<b>SYNTEX CORPORATION</b>					
SETTLEMENT DATE: 12/31/1990	CD001	CONSENT DECREE			
<b>SYNTEX LABORATORIES, INC.</b>					
SETTLEMENT DATE: 12/31/1990	CD001	CONSENT DECREE			
<b>BROADWAY SALVAGE OIL DISPOSAL #1</b>	<b>MOD981713217</b>	<b>NPL STATUS:</b> Not on the NPL	<b>NON-NPL STATUS:</b> Referred to Rmvl - NFRAP		
<b>BALLARD, JACK</b>	<b>820 BRANCH STREET</b>		<b>ST. LOUIS</b>	<b>MO</b>	<b>63147</b>
<b>CITY OF ST. LOUIS</b>	<b>1200 MARKET ST.</b>	<b>CITY HALL, RM. 314</b>	<b>ST. LOUIS,</b>	<b>MO</b>	<b>63103</b>
<b>TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS</b>	<b>2016 MADISON AVENUE</b>		<b>GRAND CITY</b>	<b>IL</b>	<b>62040</b>
<b>BROADWAY SALVAGE OIL DISPOSAL #3</b>	<b>MOD981713233</b>	<b>NPL STATUS:</b> Not on the NPL	<b>NON-NPL STATUS:</b> Referred to Rmvl - NFRAP		
<b>ADELSTEIN, HARRY</b>	<b>40 KINGSBURY PLACE</b>		<b>ST. LOUIS</b>	<b>MO</b>	<b>63112</b>
<b>BALLARD, JACK</b>	<b>820 BRANCH STREET</b>		<b>ST. LOUIS</b>	<b>MO</b>	<b>63147</b>
<b>FERER, PATRICIA A.</b>	<b>LIPTON REALTY</b>	<b>800 CHESTNUT STREET</b>	<b>ST. LOUIS</b>	<b>MO</b>	<b>63101</b>
<b>MIDEX INVESTMENTS</b>	<b>P.O. BOX 23530</b>		<b>ST. LOUIS,</b>	<b>MO</b>	<b>63112</b>

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SITE NAME, EPA ID

PARTY NAME	STREET ADDR1	STREET ADDR2	CITY	ST	ZIP
<b>State: Missouri</b>					
<b>ELLISVILLE SITE</b>	<b>MOD980633010</b>	<b>NPL STATUS:</b> Currently on the Final NPL	<b>NON-NPL STATUS:</b>		
BLISS, RUSSELL M.	149 STRECKER ROAD		BALLWIN	MO	63011
CALLAHAN, GROVER T.	162 STRECKER RD.		BALLWIN	MO	63011
CALLAHAN, JEAN ELLEN	162 STRECKER RD		BALLWIN	MO	63011
HOULIHAN NURSEY CO., INC	640 N. MOSELY ROAD		CREVE COEUR,	MO	63141
JERRY-RUSSELL BLISS, INC.	149 STRECKER ROAD		BALLWIN	MO	63011
KISCO CO., INC.	6300 ST. LOUIS AVENUE		ST. LOUIS	MO	63121
PRIMERICA, INC.	300 ST PAUL PLACE - BSP07D		BALTIMORE	MD	21202
SETTLEMENT DATE: 05/25/2001	CD004	CONSENT DECREE			
REXAM BEVERAGE CAN COMPANY, INC	4201 CONGRESS STREET, SUITE 340		CHARLOTTE	NC	28209
SETTLEMENT DATE: 05/25/2001	CD004	CONSENT DECREE			
ROSALIE INVESTMENT CO.	1962 CLAYTON RD		BALLWIN,	MO	63011
<b>ELVINS MINE TAILINGS</b>	<b>MOD985818244</b>	<b>NPL STATUS:</b> Site is Part of NPL Site	<b>NON-NPL STATUS:</b>		
DOE RUN RESOURCES CORPORATION	1801 PARK 270 DRIVE	SUITE 300	ST. LOUIS	MO	63146
SETTLEMENT DATE: 06/08/2000	AC001	ADMIN ORDER ON CONSENT			
SETTLEMENT DATE: 03/11/2005	UA001	UNILATERAL ADMIN ORDER			
<b>ERXLEBEN PROPERTY</b>	<b>MOD980853303</b>	<b>NPL STATUS:</b> Site is Part of NPL Site	<b>NON-NPL STATUS:</b>		
CHARTER INTERNATIONAL OIL COMPANY					
SETTLEMENT DATE: 11/14/1984	UA001	UNILATERAL ADMIN ORDER			
CHARTER OIL COMPANY					
SETTLEMENT DATE: 11/14/1984	UA001	UNILATERAL ADMIN ORDER			
INDEPENDENT PETROCHEMICAL CORP.	C.T. CORP.,	314 N. BROADWAY	ST. LOUIS,	MO	63102
SETTLEMENT DATE: 11/14/1984	UA001	UNILATERAL ADMIN ORDER			
THE CHARTER COMPANY					
SETTLEMENT DATE: 11/14/1984	UA001	UNILATERAL ADMIN ORDER			
<b>EXCELSIOR SPRINGS FMGP</b>	<b>MON000703573</b>	<b>NPL STATUS:</b> Not on the NPL	<b>NON-NPL STATUS:</b> Referred to Rmvl - NFRAP		
UNION ELECTRIC CO	1901 CHOUTEAU AVE	P.O. BOX 66149	ST LOUIS	MO	631666149
SETTLEMENT DATE: 09/10/2003	AC001	ADMIN ORDER ON CONSENT			
SETTLEMENT DATE: 01/18/2006	AC002	ADMIN ORDER ON CONSENT			
<b>FARMLAND INDUSTRIES OLD INSECTICIDE PLT</b>	<b>MOD980502322</b>	<b>NPL STATUS:</b> Not on the NPL	<b>NON-NPL STATUS:</b> NFRAP-Site does not qualify for the NPL		
BURLINGTON NORTHERN RAILROAD	2800 LASALLE PLAZA	800 LASALLE AVENUE	MINNEAPOLIS	MN	55402
SETTLEMENT DATE: 11/15/1989	AC002	ADMIN ORDER ON CONSENT			
SETTLEMENT DATE: 12/08/1994	CD001	CONSENT DECREE			
FARMLAND INDUSTRIES, INC. (OF KC. MO.)	PO BOX 7305	3315 NORTH OAK TRAFFICWAY	KANSAS CITY,	MO	641160005
SETTLEMENT DATE: 08/27/1987	AC001	ADMIN ORDER ON CONSENT			
SETTLEMENT DATE: 11/15/1989	AC002	ADMIN ORDER ON CONSENT			
SETTLEMENT DATE: 12/08/1994	CD001	CONSENT DECREE			



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SITE NAME, EPA ID

PARTY NAME	STREET ADDR1	STREET ADDR2	CITY	ST	ZIP
<b>State: Missouri</b>					
<b>KEM-PEST LABORATORIES</b> ELIZABETH A. KNOTE <b>KEM-PEST LABORATORIES, INC.</b> RUTH R. KNOTE SETTLEMENT DATE: 11/17/1988	<b>MOD980631113</b>	<b>NPL STATUS:</b> Deleted from the Final NPL	<b>NON-NPL STATUS:</b>		
<b>KRAMER</b> <b>ALUMAX FOILS, INC.</b> SETTLEMENT DATE: 06/18/1990 <b>HARVARD INTERIORS MANUFACTURING CO.</b> SETTLEMENT DATE: 06/18/1990 <b>KRAMER, MR. &amp; MRS. JOSEPH</b> SETTLEMENT DATE: 06/18/1990	<b>MOD980502249</b> <b>6100 S. BROADWAY</b> UA001 UNILATERAL ADMIN ORDER <b>4321 SEMPLE</b> UA001 UNILATERAL ADMIN ORDER <b>RT. 1, BOX 15</b> UA001 UNILATERAL ADMIN ORDER	<b>NPL STATUS:</b> Not on the NPL	<b>NON-NPL STATUS:</b> Referred to Rmvl - NFRAP <b>ST. LOUIS,</b> <b>ST. LOUIS,</b> <b>ELVINS,</b>	<b>MO</b>	<b>63120</b> <b>63120</b> <b>63639</b>
<b>LACY MANOR DEVELOPMENT</b> SYNTEX (USA), INC. SETTLEMENT DATE: 12/31/1990 <b>SYNTEX AGRIBUSINESS, INC.</b> SETTLEMENT DATE: 12/31/1990 <b>SYNTEX CORPORATION</b> SETTLEMENT DATE: 12/31/1990 <b>SYNTEX LABORATORIES, INC.</b> SETTLEMENT DATE: 12/31/1990	<b>MOD980687636</b> CD002 CONSENT DECREE <b>314 NORTH BROADWAY</b> CD002 CONSENT DECREE CD002 CONSENT DECREE CD002 CONSENT DECREE	<b>NPL STATUS:</b> Not on the NPL	<b>NON-NPL STATUS:</b> Referred to Rmvl - NFRAP <b>ST. LOUIS,</b>	<b>MO</b>	<b>63102</b>
<b>LAKE ROAD WAREHOUSE CO</b> <b>LAKE ROAD WAREHOUSE CO.</b> SETTLEMENT DATE: 03/27/2008	<b>MOD006851323</b> <b>1400 LOWER LAKE ROAD</b> UA001 UNILATERAL ADMIN ORDER	<b>NPL STATUS:</b> Not on the NPL	<b>NON-NPL STATUS:</b> NFRAP-Site does not qualify for the NPL <b>ST. JOSEPH</b>	<b>MO</b>	<b>64501</b>
<b>LEADWOOD MINE TAILINGS</b> <b>DOE RUN RESOURCES CORPORATION</b> SETTLEMENT DATE: 06/12/2000 SETTLEMENT DATE: 09/29/2006 SETTLEMENT DATE: 03/26/2013	<b>MOD985818210</b> <b>1801 PARK 270 DRIVE</b> AC002 ADMIN ORDER ON CONSENT UA001 UNILATERAL ADMIN ORDER AC003 ADMIN ORDER ON CONSENT	<b>NPL STATUS:</b> Site is Part of NPL Site	<b>NON-NPL STATUS:</b> <b>SUITE 300</b> <b>ST. LOUIS</b>	<b>MO</b>	<b>63146</b>
<b>LEE CHEMICAL</b> <b>LEE CHEMICAL COMPANY</b> SETTLEMENT DATE: 03/16/1987 <b>WILLIAMS, WILFORD B.</b> SETTLEMENT DATE: 03/16/1987	<b>MOD980853519</b> UA001 UNILATERAL ADMIN ORDER UA001 UNILATERAL ADMIN ORDER	<b>NPL STATUS:</b> Currently on the Final NPL	<b>NON-NPL STATUS:</b>		
<b>LEXINGTON FMGP #2</b> <b>UTILICORP</b> SETTLEMENT DATE: 05/23/2000	<b>MOD985816867</b> AC001 ADMIN ORDER ON CONSENT	<b>NPL STATUS:</b> Not on the NPL	<b>NON-NPL STATUS:</b> Referred to Rmvl - NFRAP		

# EXHIBIT 12

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

ASARCO LLC, a Delaware  
corporation,

Plaintiff,

vs.

NL INDUSTRIES, INC., a New Jersey  
corporation; ST. FRANCOIS COUNTY  
ENVIRONMENTAL CORPORATION, a  
Missouri corporation, DELTA  
ASPHALT, INC., a Missouri  
Corporation; ANSCHUTZ MINING  
CORPORATION, a Colorado  
corporation; BNSF RAILWAY  
COMPANY, a Delaware corporation;  
UNION PACIFIC RAILROAD COMPANY, a  
Utah corporation; and DOES 1-50,  
inclusive,

Defendants.

)  
)  
)  
) No.  
) 4:11-cv-00864-  
) JAR

VIDEOTAPED 30(b)(6) DEPOSITION OF  
JOHN CHRISTOPHER PFAHL  
Tucson, Arizona  
March 19, 2014  
9:00 a.m.

REPORTED BY:

Robin L. B. Osterode, RPR, CSR

AZ Certified Reporter No. 50695

1 anyone in Asarco who assumed those responsibilities  
2 for the SEMO active operation sites?

3 A. They had been sold by the time Mr. Robbins  
4 retired, and they were no longer owned or operated by  
5 Asarco.

6 Q. So there was no person in the Asarco  
7 organization after Mr. Robbins retired who picked up  
8 that mantle and visited those sites for environmental  
9 reasons?

10 A. That's correct.

11 Q. Now, let's go to the former owned and  
12 operated sites, which I think include the Catherine  
13 Mine site and the Big River Federal site. Is that --  
14 and feel -- yeah, feel free to look at the  
15 definitions. It's a different document, Exhibit 74.

16 A. Could you restate the question, please.

17 Q. I'll be glad to.

18 Either using the definition in the  
19 deposition notice for the Catherine Mine site or  
20 using your own knowledge and information, how would  
21 you describe that former operation?

22 A. It's my understanding that at some point in  
23 time, Asarco bought the company that had the Federal  
24 Mill and operated it for some period of time early in  
25 the 20th Century.

1 Q. Was that Federal Lead Company?

2 A. That's correct.

3 Q. And so earlier in the 20th Century, Asarco  
4 had bought that operation and continued operating  
5 what had been the Federal Lead Company?

6 A. Yes. And they ultimately sold it to  
7 St. Joe Lead.

8 Q. Okay. Do you know about when that sale  
9 was?

10 A. I do not.

11 Q. You were not involved in that transaction?

12 A. I wasn't alive.

13 Q. You did not have any responsibility for  
14 those operations or the sale of those assets?

15 A. No.

16 Q. Okay. So what is your understanding as to  
17 why Asarco had some continuing responsibility for  
18 environmental conditions at the Federal Mine site?

19 A. As a former owner/operator, we would have  
20 had Superfund liability at that site under the  
21 Superfund statute.

22 Q. Okay. At any time, have you had any  
23 responsibility for overseeing or participating in the  
24 management of that environmental liability for the  
25 Federal Mine site?

1 considered that in preparing for your deposition?

2 A. I have not.

3 Q. And there was a written proffer of  
4 testimony by Mr. Robbins. Have you seen that or  
5 considered that in preparing for your deposition?

6 A. I have not.

7 MR. CONNELLY: All right. We'll take a  
8 moment and go off the tape so that it can be changed.

9 THE VIDEOGRAPHER: This concludes tape two  
10 in the deposition of Chris Pfahl. We are off the  
11 record at 11:40.

12 (Recessed from 11:40 a.m. until 11:52 a.m.)

13 THE VIDEOGRAPHER: This begins tape three  
14 in the deposition of Chris Pfahl. We are on the  
15 record at 11:52.

16 (Previously marked Exhibit 4 is  
17 attached hereto.)

18 BY MR. CONNELLY:

19 Q. Mr. Pfahl, I've shown you what's been  
20 previously marked as Exhibit Number 4. I believe  
21 this to be the NewFields report in 2007 that you made  
22 reference to having seen in preparation for your  
23 deposition. Is it?

24 A. That is correct.

25 Q. Okay. Now, this report is labeled "Draft."

1 Are you aware of a final ever being done?

2 A. I am not.

3 Q. And this -- the title of this report is  
4 "Historic Railroads, St. Francois County Mined  
5 Areas." Right?

6 A. That is correct.

7 Q. Does this limit the historic railroad  
8 discussion in this report to St. Francois County?

9 A. That's what it's limited to.

10 Q. Okay. And you've looked at this. Do you  
11 see anyplace in here where Union Pacific Railroad is  
12 mentioned in any way?

13 A. I do not believe Union Pacific is directly  
14 mentioned.

15 Q. Did you see anything in this report of  
16 historic railroads that, based upon your knowledge,  
17 the company's knowledge, your experience, you  
18 associate with Union Pacific Railroad?

19 A. Some of these railroads were acquired by  
20 Union Pacific.

21 Q. Tell me which ones and how you know that.

22 A. I believe the Missouri Pacific Railroad.

23 Q. Tell me where you're looking and I can look  
24 with you.

25 A. Page 3.

1 Sweet -- I mean, to West Fork.

2 Q. And isn't the same true, that there was no  
3 railroad close to Sweetwater?

4 A. I don't recall.

5 Q. Okay. Now, you mentioned having seen some  
6 sampling results, and I'm going to hand you what's  
7 been previously marked as both Exhibit 19 and  
8 Exhibit 48.

9 (Previously marked Exhibit 19 is  
10 attached hereto.)

11 BY MR. CONNELLY:

12 Q. Is that one of the sampling results that  
13 you have seen before?

14 A. Yes.

15 Q. Now, it appears that this one was -- is  
16 reported by Teklab, Inc., on November 4, 2013, and if  
17 we look through here, it appears to be for -- hold  
18 on. I'm trying to be more precise. Well, I guess my  
19 first question is going to be, do you know where  
20 these samples were taken?

21 A. I do not know where these samples were  
22 taken.

23 Q. If you turn to the page of Exhibit 19 to  
24 page -- what's numbered page 4, not the document  
25 number, but the -- and it's actually -- if I may



1 point, it's in there, in the document number. Do you  
2 see that?

3 A. Page 4 of 12?

4 Q. Yes, sir. There is a reference to client  
5 sample ID at the top of the page, and it says "SB-1."  
6 Do you see that?

7 A. Yes.

8 Q. And if you keep turning pages, you'll see  
9 that it relates to SB-2, SB-3 and SB-4, Which  
10 indicates to me, and you may know even better than I,  
11 that there are four separate sample locations where  
12 samples are taken and tested. Does that mean that to  
13 you?

14 A. Yes, and the samples were taken at  
15 different intervals.

16 Q. Okay. But can you -- now, my having  
17 pointed that out to you, can you determine where  
18 these samples were taken?

19 A. I cannot determine where the samples were  
20 taken.

21 Q. Can you determine whether or not they were  
22 even taken within a railroad right-of-way?

23 A. I cannot.

24 Q. Okay. So once you had this information  
25 reflected on Exhibit 19 of this sampling in November

1 were settled in the bankruptcy?

2 A. Somewhere between 70 and 80.

3 Q. Okay. Are you aware of Asarco money being  
4 used for any property that was owned or operated by  
5 any of the defendants in this case?

6 A. Again, I don't think we know where the  
7 money's been spent --

8 Q. All right.

9 A. -- or if it's been spent at all.

10 Q. Well, let me take Union Pacific in -- in  
11 particular. Are you aware of any Asarco money being  
12 used for Union Pacific property or railroad  
13 right-of-ways?

14 A. We're not aware of any.

15 Q. Well, in connection with the proofs of  
16 claim that were made and the negotiated SEMO  
17 settlement, didn't the governments and Doe Run make  
18 claims as to what sites on which they had spent  
19 response costs?

20 A. Yes, there were some pass cost claims. The  
21 majority of claims were for NR -- natural resource  
22 damages.

23 Q. And some for future costs?

24 A. And some for future costs.

25 Q. So what you're saying is past costs -- to

1  
2  
3  
4  
5  
6 I, JOHN CHRISTOPHER PFAHL, do hereby  
7 declare that I have read the foregoing transcript;  
8 that I have made any corrections as appear noted, in  
9 ink, initialed by me, or attached hereto; that my  
10 testimony as contained herein, as corrected, is true  
11 and correct.

12  
13 \_\_\_\_\_ I have made changes to my deposition.

14 \_\_\_\_\_ I have NOT made any changes to my deposition.

15  
16 EXECUTED on this \_\_\_\_\_ day of  
17 \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_,  
18 (City) (State)

19  
20  
21  
22 JOHN CHRISTOPHER PFAHL  
23  
24  
25

1 STATE OF ARIZONA )  
2 COUNTY OF MARICOPA )

3 CERTIFICATE

4 I, ROBIN L. B. OSTERODE, Certified  
5 Reporter for the State of Arizona and Certified  
6 Shorthand Reporter for the State of California  
7 certify:

8 That the foregoing proceeding was taken  
9 by me; that I am authorized to administer an oath;  
10 that any witness, before testifying, was duly sworn  
11 to testify to the whole truth; that the questions and  
12 answers were taken down by me in shorthand and  
13 thereafter reduced to print by computer-aided  
14 transcription under my direction; that review and  
15 signature was requested; that the foregoing pages are  
16 a full, true, and accurate transcript of all  
17 proceedings, to the best of my skill and ability.

18 I FURTHER CERTIFY that I am in no way  
19 related to nor employed by any of the parties hereto,  
20 nor am I in any way interested in the outcome hereof.

21 DATED this 27th day of March, 2014.

22  
23  
24 ROBIN L. B. OSTERODE, RPR  
25 CA CSR No. 7750  
AZ CR No. 50695

# EXHIBIT 13

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

Case No. 4:11-cv-00864 JAR

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VIDEOTAPE DEPOSITION OF: PAUL V. ROSASCO  
February 27, 2014

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ASARCO LLC,

Plaintiff,

v.

NL INDUSTRIES, INC., et al.,

Defendants.

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PURSUANT TO NOTICE, the videotape deposition of PAUL V. ROSASCO was taken on behalf of the Defendant, Union Pacific Railroad Company, at 1801 California Street, Suite 4900, Denver, Colorado 80202, on February 27, 2014 at 9:07 a.m., before Tracy R. Doland, Certified Realtime Reporter, Registered Professional Reporter and Notary Public within Colorado.

10:46:03 1 along roads and intersections, intersections of rail  
10:46:07 2 lines and roads, water features, various things of  
10:46:15 3 that nature.

10:46:15 4 **Q. Did you have an understanding as you**  
10:46:19 5 **examined each prior sampling location that you could**  
10:46:26 6 **identify that location specifically and accurately?**

10:46:29 7 MR. EVANS: Objection, compound,  
10:46:30 8 misstates prior testimony, vague. Object to the form  
10:46:33 9 of the question.

10:46:34 10 A. I did not visit because I could not  
10:46:39 11 access and there was a general site visit. I did not  
10:46:41 12 visit all of the sampling locations. And I apologize,  
10:46:49 13 I forgot the rest of your question.

10:46:51 14 **Q. (BY MS. McINTOSH) Could you identify**  
10:46:53 15 **prior sampling locations specifically?**

10:46:56 16 A. I did not go and specifically look to  
10:46:59 17 see where actual samples were collected, no, I could  
10:47:04 18 not do that from the information I had. Just the  
10:47:06 19 general location.

10:47:07 20 **Q. Mr. Rosasco, we've been going for a**  
10:47:17 21 **little over an hour and a half. Are you fine?**

10:47:21 22 A. We could take a break.

10:47:23 23 **Q. Do you want to take a break?**

10:47:25 24 A. Let's take a break.

10:47:27 25 MS. McINTOSH: Ten minutes.

11:31:30 1 County. There is the --

11:31:33 2 **Q. Let's take -- can we take them one by**  
11:31:36 3 **one, perhaps?**

11:31:37 4 MR. EVANS: You've interrupted his  
11:31:38 5 response. He's entitled to provide a complete  
11:31:41 6 response on the record.

11:31:42 7 MS. McINTOSH: Fine. My apologies.

11:31:44 8 A. Okay. There is the old St. Joe Deslodge  
11:31:53 9 line that ran from Summit over that is -- was not  
11:32:01 10 owned by a predecessor to UP. And then there's a line  
11:32:07 11 that ran -- there's a line that ran from Cape  
11:32:27 12 Girardeau to near Flat River that was not. Those are  
11:32:35 13 the ones that I can see.

11:32:36 14 **Q. (BY MS. McINTOSH) If you would, please,**  
11:32:48 15 **identify or circle on exhibit -- Deposition Exhibit**  
11:32:56 16 **36 -- I'm going to hand you a black Sharpie, if you**  
11:32:59 17 **could outline or circle those rail lines that you've**  
11:33:06 18 **just identified as not being predecessors to Union**  
11:33:13 19 **Pacific.**

11:33:13 20 A. Well -- the figure already does.  
11:33:16 21 They're the ones not highlighted in yellow.

11:33:19 22 MR. EVANS: I would also object to that  
11:33:20 23 instruction to the extent that it would obscure other  
11:33:23 24 important features on Exhibit 36 which could lead to  
11:33:27 25 confusion.



11:33:28 1 Q. (BY MS. McINTOSH) We have multiple  
11:33:29 2 copies of Exhibit 36. And I would like to have a  
11:33:34 3 clearer understanding of precisely which ones you're  
11:33:38 4 identifying as not affiliated or not predecessors to  
11:33:41 5 Union Pacific, please.

11:33:43 6 A. Okay. All right. I drew lines -- I  
11:34:09 7 drew circles around those, but I did one that went  
11:34:12 8 outside of St. Francois County. And I didn't do all  
11:34:17 9 the ones outside of St. Francois and Madison Counties,  
11:34:22 10 so. . .

11:34:22 11 Q. But as you testified earlier, your focus  
11:34:25 12 was only on St. Francois and Madison Counties,  
11:34:28 13 correct?

11:34:29 14 A. Yes.

11:34:29 15 Q. So the -- how many circles did you draw  
11:34:33 16 on Deposition Exhibit 36?

11:34:34 17 A. Four.

11:34:35 18 Q. You addressed Mine La Motte as your  
11:34:42 19 first rail line that is not affiliated or not a  
11:34:46 20 predecessor to Union Pacific, correct?

11:34:48 21 A. Yes.

11:34:49 22 Q. And Mine La Motte is in Madison County  
11:34:54 23 just north of Fredericktown, is it not?

11:34:57 24 A. Yes.

11:34:57 25 Q. And what is the basis for your opinion

11:35:01 1 **that it is not a predecessor to Union Pacific?**

11:35:05 2 A. I believe -- I didn't find any  
11:35:09 3 indication that it was.

11:35:09 4 **Q. So your understanding is that it was a**  
11:35:12 5 **private line?**

11:35:13 6 A. I didn't find any indication as to it  
11:35:17 7 being part of a particular rail line that ultimately  
11:35:22 8 was a predecessor to Union Pacific, so I did not  
11:35:25 9 highlight it in yellow.

11:35:27 10 **Q. Well, it's designated on the legend on**  
11:35:33 11 **Deposition Exhibit 36 as a private line; is that**  
11:35:36 12 **correct?**

11:35:36 13 A. Yes. I believe that was a line  
11:35:41 14 associated with a line, but I didn't research the  
11:35:43 15 history of it --

11:35:44 16 **Q. Did you --**

11:35:45 17 A. -- beyond knowing that I couldn't tie it  
11:35:47 18 to Union Pacific.

11:35:48 19 **Q. Do you have an understanding that --**  
11:35:52 20 **well, strike that.**

11:35:53 21 **Is it your opinion that Mine La Motte is**  
11:35:57 22 **the only private line within St. Francois and Madison**  
11:36:04 23 **Counties?**

11:36:04 24 MR. EVANS: Objection. Object to the  
11:36:06 25 form of the question. Vague, ambiguous, compound.

11:36:10 1 A. We may have used the term private, but  
11:36:16 2 actually if the note says it was owned by La Motte and  
11:36:19 3 Mississippi Railroad, it was just owned by another  
11:36:24 4 company. There was also, as I indicated earlier, the  
11:36:28 5 St. Joe and Deslodge, which is also known as the  
11:36:31 6 Summit, and the there's one more shown in blue that  
11:36:46 7 was the Cape Girardeau Northern, I believe, if I've  
11:36:52 8 got my colors right.

11:36:53 9 Q. Do you have an understanding of whether  
11:36:55 10 there were any other private rail lines within Madison  
11:37:01 11 and St. Francois Counties that you did not depict on  
11:37:04 12 the map?

11:37:04 13 A. Not to my knowledge. I attempted to  
11:37:11 14 identify all the rail lines, both current and  
11:37:13 15 historic, that I could find information on.

11:37:15 16 Q. As you previously testified, you drew  
11:37:24 17 four circles on your map. The next circle that you  
11:37:29 18 drew was in the vicinity of Farmington, if I'm not  
11:37:34 19 mistaken?

11:37:35 20 A. Correct.

11:37:35 21 Q. And what did -- what did that -- we're  
11:37:40 22 talking about Farmington, Missouri as depicted on  
11:37:44 23 figure 1, Deposition Exhibit 36, within St. Francois  
11:37:49 24 County, correct?

11:37:49 25 A. Correct.

11:37:51 1 Q. And why did you -- what rail line is  
11:37:55 2 that that you drew a circle around in the vicinity of  
11:38:01 3 Farmington?

11:38:01 4 A. Well, now I can't tell because I drew a  
11:38:04 5 circle through the information. So do we have another  
11:38:07 6 copy?

11:38:07 7 Q. Would you like another copy?

11:38:08 8 MR. EVANS: Let's have that marked next  
11:38:10 9 in order, please.

11:38:25 10 (Deposition Number 37 was marked.)

11:39:00 11 Q. (BY MS. McINTOSH) Mr. Rosasco, you've  
11:39:01 12 just been provided Deposition Exhibit 37, which is --

11:39:05 13 MR. EVANS: May I please have a copy?

11:39:07 14 MS. McINTOSH: Your copy is not marked.

11:39:10 15 MR. EVANS: I need a copy of the exhibit  
11:39:11 16 being shown to the witness, please. Thank you.

11:39:14 17 Q. (BY MS. McINTOSH) You've been shown --  
11:39:15 18 you've just been given Deposition Exhibit 37, which is  
11:39:19 19 also figure 1, location of existing and historic rail  
11:39:25 20 lines; is that correct?

11:39:25 21 A. Yes.

11:39:25 22 Q. So Deposition Exhibits 36 and 37 are the  
11:39:30 23 same figure 1 that was prepared at your direction,  
11:39:34 24 correct?

11:39:34 25 A. Yes.

11:39:35 1 Q. But Deposition Exhibit 36 you've  
11:39:38 2 identified in black marker those railroads, rail lines  
11:39:43 3 that, in your opinion, are not predecessors to Union  
11:39:47 4 Pacific, correct?

11:39:47 5 A. Correct.

11:39:48 6 Q. So the -- we were speaking about the  
11:39:52 7 rail line that is in the vicinity of Farmington,  
11:39:56 8 Missouri and St. Francois County that you circled as  
11:40:00 9 not affiliated with Union Pacific. Can you please  
11:40:03 10 identify which rail line that is?

11:40:05 11 MR. EVANS: Can I have the question  
11:40:06 12 back, please.

11:40:10 13 Q. (BY MS. McINTOSH) We were speaking  
11:40:11 14 about --

11:40:12 15 MR. EVANS: I'm entitled to have the  
11:40:13 16 question read back. If you'd allow the court reporter  
11:40:16 17 to please read back the question, I'd appreciate it.

11:40:35 18 (The question was read back as follows:  
19 "So the -- we were speaking about the rail line that  
20 is in the vicinity of Farmington, Missouri and St.  
21 Francois County that you circled as not affiliated  
22 with Union Pacific. Can you please identify which  
11:40:40 23 rail line that is?")

11:40:40 24 MR. EVANS: Thank you.

11:40:41 25 A. Okay. The rail line was -- initially

11:40:45 1 there was grading done by the Chester and Iron  
11:40:48 2 Mountain and Southern, but that line went bankrupt and  
11:40:57 3 it was ultimately completed as a Saline Valley  
11:41:00 4 Railroad from 1906 to 1917, which then merged into the  
11:41:05 5 Cape Girardeau and Northern that was abandoned about  
11:41:12 6 1917. We could not find any actual records of the  
11:41:16 7 actual alignment, so that's why we made that note.

11:41:20 8 **Q. (BY MS. McINTOSH) And is -- what is the**  
11:41:25 9 **color of -- is that the sort of greenish-blue?**

11:41:33 10 **A.** That would be the blue that is the very  
11:41:35 11 first item listed under the legend on the lower left  
11:41:39 12 portion of Exhibit 37.

11:41:41 13 **Q. In other words, you're referring to the**  
11:41:44 14 **Cape Girardeau North -- Northern, rather; is that**  
11:41:47 15 **correct?**

11:41:47 16 **A.** Correct.

11:41:48 17 **Q. You also identified on Deposition**  
11:41:55 18 **Exhibit 36 a rail line running in a sort of**  
11:42:07 19 **northwesterly direction from approximately De Lassos**  
11:42:15 20 **to Flat River within St. Francois County; is that**  
11:42:18 21 **correct?**

11:42:18 22 **A.** Yes.

11:42:18 23 **Q. And which rail line is that and what**  
11:42:22 24 **color is it, please?**

11:42:23 25 **A.** It appears to be blue and it may be

11:42:26 1 part of the Cape Girardeau Northern, but I don't  
11:42:30 2 recall as I sit here right now. I want to check my  
11:42:32 3 report to see if I have something on that in there.  
11:43:20 4 At this time, I don't recall. I don't see a note on  
11:43:23 5 my figure, and other than taking a bunch of time to go  
11:43:26 6 through the report, I just don't recall.

11:43:28 7 **Q. In other words, you don't know what the**  
11:43:30 8 **blue line railroad is?**

11:43:32 9 MR. EVANS: Objection, misstates prior  
11:43:34 10 testimony. Object to the form of the question.  
11:43:36 11 Argumentative.

11:43:37 12 A. At this time, without taking a  
11:43:40 13 significant amount of time, I can't determine who --  
11:43:43 14 what railroad was the owner of that particular line.

11:43:48 15 **Q. (BY MS. McINTOSH) You also circled --**  
11:43:53 16 **can we look at -- you also circled a green dashed line**  
11:44:00 17 **that is -- runs from south of Bonne Terre to Summit,**  
11:44:11 18 **partially within St. Francois County, as the fourth**  
11:44:16 19 **rail line that is not affiliated with Union Pacific;**  
11:44:20 20 **is that correct?**

11:44:20 21 A. Yes.

11:44:20 22 **Q. And what -- what rail line is that,**  
11:44:24 23 **please?**

11:44:24 24 A. That was the estimated alignment because  
11:44:29 25 there is nothing left of it, of the original St. Joe

11:44:32 1 and Deslodge Railroad from Summit over to Bonne Terre.

11:44:39 2 Q. In the legend, you have listed also the  
11:44:53 3 Burlington Northern and parenthetically indicates it  
11:45:03 4 has UP tracking rights. Can you identify on Exhibit  
11:45:07 5 37 where the Burlington Northern line is that you're  
11:45:12 6 referring to?

11:45:12 7 A. I believe that's the line that extends  
11:45:14 8 from Ste. Genevieve down along the Mississippi River  
11:45:23 9 in the upper right corner of the figure.

11:45:24 10 Q. That is not -- so it -- essentially it  
11:45:36 11 parallels the Mississippi River and travels through  
11:45:40 12 Ste. Genevieve; is that correct?

11:45:41 13 A. Yes.

11:45:42 14 Q. That line is not, however, within  
11:45:47 15 St. Francois and Madison Counties, is it?

11:45:50 16 A. Correct. Sorry. Correct.

11:45:51 17 Q. So did you formulate any opinions about  
11:45:56 18 that line?

11:45:56 19 A. No.

11:45:57 20 Q. Is it your opinion, then, that all the  
11:46:21 21 lines that are highlighted in yellow shown on  
11:46:26 22 Deposition Exhibit 36 and 37 within St. Francois and  
11:46:32 23 Madison Counties are Union Pacific or Union Pacific  
11:46:37 24 predecessor railroads?

11:46:38 25 A. Yes.



11:46:39 1 Q. Are there any other entities or rail  
11:46:53 2 lines that you did not depict on figure 1, Deposition  
11:47:01 3 Exhibits 36 and 37, that you believe is a predecessor  
11:47:04 4 to Union Pacific railroad within St. Francois or  
11:47:07 5 Madison County?

11:47:08 6 A. Not that I'm aware of, no.

11:47:10 7 Q. So in other words, this is, in your  
11:47:12 8 opinion, an exhaustive listing of those rail lines  
11:47:18 9 that are either Union Pacific or predecessor  
11:47:21 10 railroads?

11:47:22 11 MR. EVANS: Object to the form.

11:47:23 12 A. It is a listing of what I could  
11:47:26 13 determine based on the information I reviewed. As I  
11:47:30 14 indicated, I received additional documents after my  
11:47:32 15 report was issued and understand that there is to be a  
11:47:36 16 deposition of a Union Pacific representative who, at  
11:47:40 17 least it's been conveyed to me, is knowledgeable about  
11:47:42 18 the ownership history in this area, so I would review  
11:47:47 19 that information and update that, update this figure  
11:47:50 20 to reflect the results of that. But at the time I  
11:47:53 21 prepared my report, this was as much as I could  
11:47:56 22 determine.

11:47:56 23 Q. (BY MS. McINTOSH) Have you reviewed any  
11:47:58 24 of the what you described as new information at this  
11:48:02 25 time?

03:21:43 1 **Is it your understanding that Environ**

03:21:49 2 **collected the samples for Asarco?**

03:21:50 3 MR. EVANS: Objection, work product,

03:21:52 4 argumentative, calls for speculation. Lacks

03:21:55 5 foundation. Vague and ambiguous.

03:21:57 6 A. I am not entirely sure who collected the

03:22:01 7 samples.

03:22:01 8 **Q. (BY MS. McINTOSH) Do you know how the**

03:22:03 9 **samples were collected?**

03:22:05 10 MR. EVANS: Objection, work product.

03:22:11 11 Calls for speculation. Lacks foundation. Vague,

03:22:14 12 ambiguous.

03:22:15 13 A. I believe, based on review of the

03:22:21 14 photographs shown in Exhibits 42 and 43, they were

03:22:29 15 collected either as surface grab samples or hand auger

03:22:34 16 borings.

03:22:40 17 **Q. (BY MS. McINTOSH) Do you know who took**

03:22:41 18 **the photos --**

03:22:42 19 A. No.

03:22:44 20 **Q. -- in Deposition Exhibits 42 and 43?**

03:22:48 21 A. No.

03:22:49 22 **Q. Do you know when those photos were**

03:22:51 23 **taken?**

03:22:51 24 A. They state November 2013.

03:22:55 25 **Q. So do you know any -- any date more**

03:52:10 1 to the form of the question. Misstates prior

03:52:12 2 testimony.

03:52:12 3 A. I apologize. I'm getting tired. I

03:52:20 4 believe the answer to my question is yes. These

03:52:22 5 only -- these tables summarize the results of the

03:52:25 6 Asarco samples 1 through 9.

03:52:27 7 Q. (BY MS. McINTOSH) And table 1 is not

03:52:28 8 the Asarco sampling, it is derived from the NewFields

03:52:34 9 sampling; is that correct?

03:52:34 10 A. Yes.

03:52:35 11 Q. If you would, please, Mr. Rosasco, could

03:53:06 12 you turn to Deposition Exhibit 4 that was a deposition

03:53:12 13 exhibit to the deposition of Mr. Gramelia?

03:53:18 14 A. Yes.

03:53:19 15 Q. Is that the NewFields report that you've

03:53:23 16 referred to from which table 1 information data was

03:53:27 17 derived?

03:53:27 18 A. Table 1 is basically a copy of table 3

03:53:43 19 from the NewFields report on page 9 of the NewFields

03:53:48 20 report.

03:53:48 21 Q. So the answer to my question was yes?

03:53:50 22 A. Yes.

03:53:51 23 Q. Do you have an understanding why the

03:53:55 24 NewFields report, Deposition Exhibit 4, is identified

03:53:59 25 as a draft?

03:53:59 1 A. No, I do not.

03:54:02 2 Q. Do you have an understanding as to  
03:54:06 3 whether any final report was ever done?

03:54:07 4 A. To my knowledge, this is the only  
03:54:13 5 version of the report.

03:54:16 6 Q. This report was done by NewFields for  
03:54:19 7 Doe Run; is that correct?

03:54:20 8 A. That's my understanding, yes.

03:54:24 9 MR. EVANS: At the direction of the EPA,  
03:54:27 10 to make the record clear.

03:54:28 11 MS. McINTOSH: If you want to redirect  
03:54:31 12 the witness, you can do so at your own --

03:54:33 13 MR. EVANS: Object to the question as  
03:54:34 14 being misleading. Object to the form of the question.  
03:54:42 15 Argumentative.

03:54:42 16 Q. (BY MS. McINTOSH) Is it your  
03:54:43 17 understanding, Mr. Rosasco, that the sampling  
03:54:45 18 conducted by NewFields was on historic railroads?

03:54:50 19 A. Yes.

03:55:06 20 Q. And that all the samples were conducted  
03:55:10 21 on private property; is that correct?

03:55:15 22 MR. EVANS: Objection, calls for a legal  
03:55:17 23 conclusion.

03:55:17 24 A. No, I don't believe that's correct.

03:55:19 25 Q. (BY MS. McINTOSH) Directing your

04:15:11 1 form.

04:15:11 2 A. I believe based on my inspections that  
04:15:17 3 chat is eroded from the former Belmont line where it  
04:15:22 4 crosses City Lake and that there was erosion of  
04:15:27 5 tailings into City Lake. Beyond that, I don't have  
04:15:36 6 any specific --

04:15:39 7 MR. EVANS: Please mark the page.

04:15:41 8 **Q. (BY MS. McINTOSH) Do you have an**  
04:15:42 9 **understanding as to whether that location is within**  
04:15:45 10 **the Catherine Mine site?**

04:15:50 11 A. No, I don't recall right now as I sit  
04:15:54 12 here.

04:15:57 13 MR. EVANS: We've been going over an  
04:16:00 14 hour, so let's take five minutes if we can.

04:16:03 15 MS. McINTOSH: Fine.

04:16:05 16 THE VIDEOGRAPHER: Going off the record.  
04:16:08 17 The time is 4:16 p.m.

04:16:13 18 (Recess taken, 4:16 p.m. to 4:26 p.m.)

04:25:33 19 THE VIDEOGRAPHER: We are back on the  
04:26:21 20 record. The time is 4:26 p.m.

04:26:26 21 **Q. (BY MS. McINTOSH) Mr. Rosasco, are you**  
04:26:27 22 **aware of any location where Asarco funds are being**  
04:26:33 23 **used to remediate Union Pacific right-of-way?**

04:26:38 24 MR. EVANS: Object to the question as  
04:26:39 25 calling for a legal conclusion, vague, ambiguous.

04:26:46 1 Object to the form of the question.

04:26:47 2 A. I'm not aware that any remediation of  
04:26:55 3 Union Pacific right-of-way is being performed at this  
04:26:57 4 time.

04:26:57 5 Q. (BY MS. McINTOSH) Are you -- so the  
04:27:00 6 answer to my question was no?

04:27:02 7 A. The answer would be no, yes.

04:27:06 8 Q. Are you aware of any area off Union  
04:27:10 9 Pacific right-of-way that you would attribute to Union  
04:27:14 10 Pacific right-of-way where Asarco funds are being used  
04:27:17 11 to remediate that location?

04:27:19 12 MR. EVANS: Objection, vague, ambiguous.  
04:27:23 13 Object to form.

04:27:23 14 A. Response actions have been taken by EPA  
04:27:35 15 in the state to address service water and sediment in  
04:27:41 16 terms of investigations and other actions of which all  
04:27:45 17 of the sources, including the UP rail line ballast,  
04:27:50 18 would be a contributor. But I have not looked at the  
04:27:54 19 specific derivation of funds associated with those.

04:27:59 20 MR. EVANS: Mark the page, please.

04:28:02 21 Q. (BY MS. McINTOSH) So do you have an  
04:28:03 22 opinion to a reasonable degree of scientific certainty  
04:28:07 23 whether there is any location attributable to Union  
04:28:13 24 Pacific right-of-way where Asarco funds are being used  
04:28:16 25 for remediation purposes?

1 I, PAUL V. ROSASCO, do hereby certify  
2 that I have read the above and foregoing deposition  
3 and that the same is a true and accurate transcription  
4 of my testimony, except for attached amendments, if  
5 any.

6 Amendments attached ( ) Yes ( ) No

7

8

9

\_\_\_\_\_  
PAUL V. ROSASCO

10

11

12 The signature above of PAUL V. ROSASCO  
13 was subscribed and sworn to before me in the county of  
14 \_\_\_\_\_, state of \_\_\_\_\_,  
15 this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

16

17

18

\_\_\_\_\_  
Notary Public  
My Commission expires:

19

20

21

22

23

24

25 Asarco LLC, 2/27/14 (td)

## REPORTER'S CERTIFICATE

STATE OF COLORADO )  
 ) ss.  
CITY AND COUNTY OF DENVER )

I, TRACY R. DOLAND, Certified Realtime Reporter, Registered Professional Reporter and Notary Public ID 19924009337, State of Colorado, do hereby certify that previous to the commencement of the examination, the said PAUL V. ROSASCO was duly sworn by me to testify to the truth in relation to the matters in controversy between the parties hereto; that the said deposition was taken in machine shorthand by me at the time and place aforesaid and was thereafter reduced to typewritten form; that the foregoing is a true transcript of the questions asked, testimony given, and proceedings had.

I further certify that I am not employed by, related to, nor of counsel for any of the parties herein, nor otherwise interested in the outcome of this litigation.

IN WITNESS WHEREOF, I have affixed my  
signature this 11th day of March, 2014.

My commission expires June 12, 2016.

Tracy R. Doland  
Certified Realtime Reporter  
Registered Professional Reporter

X Reading and Signing was requested.

Reading and Signing was waived.

Reading and Signing is not required.



# EXHIBIT 14

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

ASARCO, LLC, )  
 ) Case No.:  
Plaintiff, ) 4:11-cv-00864-JAR  
 )  
v. )  
 )  
NL INDUSTRIES, INC., et al., )  
 )  
Defendants. )  
\_\_\_\_\_ )

VIDEOTAPED DEPOSITION OF DONALD A. ROBBINS

Phoenix, Arizona  
April 18, 2014  
9:05 a.m.

REPORTED BY:  
Janice Gonzales, RPR, CRR  
AZ Certified Court  
Reporter No. 50844

1 making a statement on the record, we're not  
2 terminating this deposition. We are suspending it  
3 because there is a pending issue regarding our right  
4 to question Mr. Robbins regarding the liability of  
5 ASARCO and the liability of other defendants, and  
6 we're all waiting on a ruling by the Court on that.

7 So if the Court rules in our favor, we  
8 would probably -- we will probably reconvene this  
9 deposition to do so. I think you appreciate the fact  
10 that that is our position and you're not saying you  
11 have no right to consider doing that.

12 MR. BELANCIO: I appreciate your  
13 position, and it is 100 percent preserved on the  
14 record here today.

15 MR. CONNELLY: Thank you.

16 EXAMINATION

17 BY MR. BELANCIO:

18 Q. Mr. Robbins, are you here as a corporate  
19 representative for ASARCO today or -- or are you here  
20 in your personal capacity?

21 A. In my personal capacity.

22 Q. Okay. Second question. There was a  
23 little confusion on one of your answers, and the  
24 question kind of went to, are you aware of whether  
25 ASARCO or the EPA actually spent any money

1 remediating a railroad right-of-way? And I was  
2 unsure whether you answered, no, they did not, or,  
3 no, you have no recollection of that?

4 A. I have no knowledge that they spent  
5 money.

6 MR. BELANCIO: Thank you. I have no  
7 further questions.

8 MR. CONNELLY: I have nothing further.

9 MR. HERZ: I just want to have clarity  
10 before we leave today.

11 THE VIDEOGRAPHER: Sir, let me give you  
12 this microphone.

13 MR. HERZ: I want to just have clarity  
14 before we leave, which is, I don't really want my  
15 position preserved. I need your agreement now that  
16 by coming here today and listening to this  
17 deposition, ASARCO's not going to go back into court  
18 and say that NL is precluded from further taking --  
19 from taking testimony from this gentleman in Phase  
20 II?

21 MR. BELANCIO: I think I agreed to that  
22 with you.

23 MR. HERZ: Okay. I just want to make  
24 sure we have that agreement.

25 MR. BELANCIO: I thought I agreed to

1 I, Donald A. Robbins, do hereby declare  
2 under penalty of perjury that I have read the  
3 foregoing transcript; that I have made any  
4 corrections as appear noted, in ink, initialed by me,  
5 or attached hereto; that my testimony as contained  
6 herein, as corrected, is true and correct.

7  
8 \_\_\_\_\_ I have made changes to my deposition.

9 \_\_\_\_\_ I have NOT made any changes to my deposition.

10  
11 EXECUTED this \_\_\_\_\_ day of  
12 \_\_\_\_\_, 20\_\_, at \_\_\_\_\_,  
13 \_\_\_\_\_ (City)  
14 (State)

15  
16  
17  
18 \_\_\_\_\_  
19 Donald A. Robbins  
20  
21  
22  
23  
24  
25

1 STATE OF ARIZONA )  
COUNTY OF MARICOPA )  
2

3 CERTIFICATE

4 I, JANICE E. GONZALES, Certified Court  
5 Reporter for the State of Arizona, certify:

6 That the foregoing proceeding was taken  
7 by me; that I am authorized to administer an oath;  
8 that the witness, before testifying, was duly sworn  
9 by me to testify to the whole truth; that the  
10 questions propounded by counsel and the answers of  
11 the witness were taken down by me in shorthand and  
12 thereafter reduced to print by computer-aided  
13 transcription under my direction; that review and  
14 signature was requested; that the foregoing pages are  
15 a full, true, and accurate transcript of all  
16 proceedings, all to the best of my skill and ability.

17 That the amount of time used by each  
18 party at the deposition is as follows:

19 Michael Connelly, Esq. - 2 hours, 8 minutes

20 Michael Belancio, Esq. - 1 minute

21 Joel Herz, Esq. - 0 minutes

22 Carolyn McIntosh, Esq. - 0 minutes

23 Norton Colvin, Esq. - 0 minutes

24 Maxine Martin, Esq. - 0 minutes  
25

1 I FURTHER CERTIFY that I am in no way  
2 related to nor employed by any of the parties hereto  
3 nor am I in any way interested in the outcome hereof.

4 DATED this 29th day of April, 2014.

5  
6  
7  
8 Janice E. Gonzales, RPR, CRR  
9 Certified Court Reporter No. 50844  
10 For the State of Arizona  
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# EXHIBIT 15



ROBERT GRIMAILA - 11/7/2013

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

ASARCO, LLC,	)	CASE NO. 4:11-CV-00864 JAR
	)	
PLAINTIFF,	)	
	)	VIDEOTAPE
vs.	)	DEPOSITION OF
	)	ROBERT GRIMAILA
NL INDUSTRIES, INC.,	)	
ET AL.,	)	
	)	
DEFENDANTS.	)	

VIDEOTAPE DEPOSITION OF ROBERT GRIMAILA, taken  
before Mary Lou Harmon, RPR, CRR, CSR(IA), CCR, General  
Notary Public within and for the State of Nebraska,  
beginning at 9:05 a.m., on the 7th day of November 2013,  
at Cassem, Tierney, Adams, Gotch & Douglas, Suite 302,  
9290 West Dodge Road, Omaha, Nebraska.

ROBERT GRIMAILA - 11/7/2013

1 knowledge of any further documents, no.

2 BY MR. EVANS:

3 Q. All right. So state for the court, and then  
4 we'll move on, that you have not seen any documents  
5 related to any of the allegations other than the notice  
6 of deposition and the complaint itself?

7 MS. MCINTOSH: Objection. The question  
8 mischaracterizes Mr. Grimaila's testimony.

9 THE WITNESS: Again, the only documents  
10 I've reviewed are the notice of deposition and the  
11 second amended complaint.

12 BY MR. EVANS:

13 Q. Why didn't you look at any data?

14 A. Data related to?

15 Q. To the claims concerning the waste allegedly  
16 left in SEMO by Union Pacific and its predecessor  
17 railroad?

18 MS. MCINTOSH: Objection. The question  
19 is vague.

20 THE WITNESS: The SEMO site noted in the  
21 second amended complaint does not involve Union Pacific.  
22 We have not been notified from the EPA or any other  
23 method. It has not come to my attention as a site of  
24 concern.

25

ROBERT GRIMAILA - 11/7/2013

1 CERTIFICATE OF REPORTER

2 I, Mary Lou Harmon, a Certified Shorthand  
3 Reporter, hereby certify that the witness in the  
4 foregoing deposition was by me duly sworn to tell  
5 the truth, the whole truth, and nothing but the  
6 truth in the within-entitled cause;

7 That said deposition was taken down in  
8 shorthand by me, a disinterested person, at the time  
9 and place therein stated, and that the testimony of  
10 the said witness was thereafter reduced to  
11 typewriting, by computer, under my direction and  
12 supervision;

13 That before completion of the deposition,  
14 review of the transcript was requested. Any changes  
15 made by the deponent (and provided to the reporter)  
16 during the period allowed are appended hereto.

17 I further certify that I am not of counsel  
18 or attorney for either or any of the parties to the  
19 said deposition, nor in any way interested in the  
20 event of this cause, and that I am not related to  
21 any of the parties thereto.

22 DATED: November 13, 2013

23 MARY LOU HARMON, RPR, CRR  
24 CSR NO. 0112

25 My commission expires:

# EXHIBIT 16

JOHN HAWKINS - 3/6/2014

Page 1

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

ASARCO, LLC,	)	CASE NO. 4:11-CV-00864 JAR
	)	
PLAINTIFF,	)	VIDEOTAPED DEPOSITION OF
	)	JOHN HAWKINS
VS.	)	
	)	
NL INDUSTRIES, INC.,	)	
ET AL.,	)	
	)	
DEFENDANTS.	)	

- - - - -

VIDEOTAPED DEPOSITION OF JOHN HAWKINS,  
taken before Kristin M. Teel, RPR, CRR, CSR(IA),  
General Notary Public within and for the State of  
Nebraska, beginning at 9:01 a.m., on March 6, 2014,  
at Thomas & Thomas Court Reporters, 1321 Jones  
Street, Omaha, Nebraska.

1 rail lines contiguous with any of the SEMO sites?

2 MS. McINTOSH: Objection: Calls for  
3 a legal conclusion, protective order.

4 THE WITNESS: I will answer that --

5 MS. McINTOSH: Also -- sorry --  
6 inconsistent with beyond the scope of the topics.

7 THE WITNESS: Okay. I am not aware  
8 of an active Union Pacific rail line that is  
9 contiguous to a SEMO site.

10 BY MR. BELANCIO:

11 Q. What about running through a SEMO site?

12 MS. McINTOSH: Objection: Vague,  
13 calls for a legal conclusion, protective order.

14 THE WITNESS: No, no active line  
15 would run through a SEMO site.

16 MR. HERZ: Could we just move the  
17 speaker closer to the witness a little bit?

18 MR. BELANCIO: Sure, Joel.

19 MR. HERZ: He's falling out.

20 MR. BELANCIO: I'm going to attempt  
21 to do it without hanging it up.

22 MR. HERZ: Thank you.

23 MS. McINTOSH: It's like a  
24 disembodied head.

25 MR. BELANCIO: I forgot Joel was

## 1 C E R T I F I C A T E

2 I, Kristin Teel, a Certified Shorthand  
3 Reporter, hereby certify that the witness in the  
4 foregoing deposition was by me duly sworn to tell  
5 the truth, the whole truth, and nothing but the  
6 truth in the within-entitled cause;

7 That said deposition was taken down in  
8 shorthand by me, a disinterested person, at the time  
9 and place therein stated, and that the testimony of  
10 the said witness was thereafter reduced to  
11 typewriting, by computer, under my direction and  
12 supervision;

13 That before completion of the deposition,  
14 review of transcript was requested. If requested,  
15 any changes made by the deponent (and provided to  
16 the reporter) during the period allowed are appended  
17 hereto;

18 I further certify that I am not of counsel  
19 or attorney for either or any of the parties to the  
20 said deposition, nor in any way interested in the  
21 event of this cause, and that I am not related to  
22 any of the parties thereto.

23 DATED: March 14, 2014

24  
25 KRISTIN TEEL, CRR, RPR, CSR(IA)  
CSR NO. 1261

# EXHIBIT 17



POOR'S  
MANUAL  
—  
1890.

—  
AMERICAN BANK NOTE CO.

NO. 86 TRINITY PLACE,  
NEW YORK,

Engravers and Printers,

STEEL PLATE AND LITHOGRAPHIC  
RAILROAD BONDS,  
STOCK CERTIFICATES,  
TICKETS, MAPS, FOLDERS, ETC. ETC.

UPRR-002577

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# EXHIBIT 18

State of Utah  
Department of Commerce  
Division of Corporations and Commercial Code

**EXPEDITE**

Co# 002083

I hereby certify that the foregoing has been read and approved on this day of Jan 1997 in the office of this Division and hereby issue this Certificate thereof.

CONTAINS A DELAYED EFFECTIVE DATE

**RECEIVED**

DEC 27 1996

Examiner PS

Date 12/27/96



Karla S. Webb

KARLA S. WEBB  
Div. of Corporations

ARTICLES OF MERGER OF  
MISSOURI PACIFIC RAILROAD COMPANY  
WITH AND INTO  
UNION PACIFIC RAILROAD COMPANY  
(Delaware corporation with and into Utah corporation)

Utah Div. of Corp. Comm. Code 9:50am

Co# 002083

Pursuant to the provisions of Section 16-10a-1107 of the Utah Revised Business Corporation Act (the "Act"), Union Pacific Railroad Company, a Utah corporation ("UPRR"), hereby adopts and files the following Articles of Merger relating to the merger of Missouri Pacific Railroad Company, a Delaware corporation ("MPRR"), with and into UPRR, with UPRR remaining as the surviving corporation:

**EJS**

**FIRST:** The name and place of incorporation of each corporation which is a party to the Merger (as defined below) is as follows:

<u>Name of Corporation</u>	<u>Place of Incorporation</u>
Union Pacific Railroad Company	Utah
Missouri Pacific Railroad Company	Delaware

**SECOND:** The Agreement and Plan of Merger (the "Plan of Merger"), which is attached hereto as Exhibit A, governing the merger between MPRR and UPRR (the "Merger") has been approved pursuant to resolutions duly adopted by the Board of Directors of MPRR and the Board of Directors of UPRR.

**THIRD:** At the effective time of the Merger (the "Effective Time"), the Restated Articles of Association of UPRR shall be amended and restated in their entirety as set forth in Exhibit A to the Plan of Merger (the "Amended and Restated Articles of Incorporation") and such Amended and Restated Articles of Incorporation shall be the articles of incorporation for the Surviving Corporation (as defined below).

**FOURTH:** Immediately prior to the Merger, the only classes of capital stock of MPRR were its Common Stock, \$1.00 par value per share (the "MPRR Common Stock"), of which 920 shares were issued and outstanding, and its Class A Stock, \$1.00 par value per share (the "MPRR Class A Stock"), of which 80 shares were issued and outstanding. The Merger was duly approved by the written consent of the sole stockholder of MPRR. Immediately prior to the Merger, there were 38,867,392.7058830729 shares of Common Stock, \$10.00 par value per share, of UPRR (the "UPRR Common Stock") issued and outstanding. UPRR Common Stock is the only class of capital stock of UPRR issued and outstanding. Pursuant to Section 16-10a-1103 of the Act, the Plan of Merger and the Merger were duly approved by each of the shareholders of UPRR.

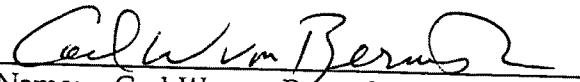
6362000006

UPRR-001691

FIFTH: At the Effective Time, (i) MPRR shall merge with and into UPRR, which shall survive the Merger and continue as a Utah corporation (the "Surviving Corporation"), (ii) the separate existence of MPRR shall cease, as provided in the Act, (iii) pursuant to the Amended and Restated Articles of Incorporation, the authorized amount of UPRR Common Stock shall be increased from 39,617,870 shares to 92,000,000 shares and UPRR shall be authorized to issue 8,000,000 shares of a new Class A Stock, par value \$10 per share (the "UPRR Class A Stock"), (iv) all of the shares of MPRR Common Stock and MPRR Class A Stock which shall be outstanding immediately prior to the Merger, and all rights in respect thereof, shall forthwith be converted into 19,152,560 shares of UPRR Common Stock and 1,665,440 shares of UPRR Class A Stock, respectively, (v) the 30,467,751.0330599272 shares of UPRR Common Stock owned by Union Pacific Corporation immediately prior to the Merger, and all rights in respect thereof, shall forthwith be converted into 28,030,376 shares of UPRR Common Stock and 2,437,424 shares of UPRR Class A Stock, and (vi) the 8,399,641.6728231457 shares of UPRR Common Stock owned by Chicago and North Western Transportation Company immediately prior to the Merger, and all rights in respect thereof, shall forthwith be converted into 7,727,632 shares of UPRR Common Stock and 671,968 shares of UPRR Class A Stock.

SIXTH: THE MERGER SHALL BECOME EFFECTIVE AT 12:00 NOON EASTERN STANDARD TIME ON JANUARY 1, 1997.

UNION PACIFIC RAILROAD COMPANY



Name: Carl W. von Bernuth

Title: Vice President and General Counsel

December 27, 1996

G:\JE\ARTMGMP.JJD

# EXHIBIT 19

C. A. ROCKWELL  
MISSOURI PACIFIC BLDG.  
ST. LOUIS, MO. — 19875 —  
[Petition No. 2499]

1075

In the  
**DISTRICT COURT OF THE UNITED STATES,**  
Eastern Division, Eastern Judicial District  
of Missouri.

In the Matter of  
MISSOURI PACIFIC RAILROAD  
COMPANY,  
Debtor. } In Proceedings  
for the  
Reorganization  
of a Railroad.  
No. 6935.

**PETITION**

Of Trustee for Dismissal of Reorganization Proceedings as to Missouri-Illinois Railroad Company, Debtor, and Trustee's Report of His Administration of Said Debtor's Estate.

Comes now Guy A. Thompson, Trustee, Missouri-Illinois Railroad Company, Debtor, and respectfully states to the Court:

1. That on June 30, 1933, the Missouri-Illinois Railroad Company duly filed its Petition No. 47 (Rec. p. 323) herein, alleging that it was without sufficient funds to pay and discharge its obligations and was unable to meet its debts as they matured, and praying

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2011/11/15

UPRR-001744

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erty and assets of said trust estate, the title to which is now vested in or held by Trustee, and that thereupon Trustee be fully and finally discharged of his trust herein and from all obligations in connection with his administration of said trust estate, and that his surety be fully and finally discharged from all liability on the bond of Trustee.

Trustee Prays for such other and further order or directions as to the Court may seem appropriate in the premises.

GUY A. THOMPSON,  
Trustee.

RUSSELL L. DEARMONT,  
Counsel for Trustee.

United States of America  
Eastern Judicial District of Missouri }  
City of St. Louis

Guy A. Thompson, being duly sworn, upon his oath deposes and states that he has read the foregoing Petition, that the facts stated therein are true, as he verily believes.

GUY A. THOMPSON.

Subscribed and Sworn to before me this 14th day of April, 1944.

My Commission expires March 8, 1946.

(Seal) HARRIET COX,  
Notary Public.

— 19881 —

“EXHIBIT 1.”

In the  
District Court of the United States,  
Eastern Division, Eastern Judicial District  
of Missouri.

In the Matter of	}	In Proceedings for the Reorganization of a Railroad. No. 6935.
Missouri Pacific Railroad Company,		
Debtor.		

Report of His Administration  
By Guy A. Thompson, Trustee of the Missouri-Illinois  
Railroad Company, Debtor, in the Aforesaid  
Proceedings.

To the Honorable George H. Moore, Judge:

Comes now Guy A. Thompson, Trustee of the Missouri-Illinois Railroad Company, Debtor, and, as a part of his Petition this day filed herein for the discharge of said Debtor from bankruptcy, files this his Report covering the trusteeship herein of said Debtor Railroad:

Introduction:

A. Mississippi River and Bonne Terre Railway Company.

Prior to the construction of the Iron Mountain Railroad to Pilot Knob, Missouri, in 1858, the products

UPRR-001747

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— 19882 —

of the lead mines in Washington and St. Francois Counties, Missouri, were hauled by ox cart to Ste. Genevieve and Herculaneum, and thence handled by the Mississippi River. When the Missouri Pacific Railroad became available, the lead was diverted to it, the delivery from the mines to stations on the Iron Mountain being by ox cart and team. The very poor roads made this delivery so extremely expensive that the St. Joseph Lead Company and the Desloge Lead Company constructed a narrow gauge railroad about thirteen miles long from Bonne Terre, Missouri, to the station of Summit (about two miles south of Mineral Point on the Iron Mountain Railroad). This narrow gauge line was known as the St. Joseph & Desloge Railway, and it was opened for operation in January, 1880.

This railroad venture proved to be very profitable to its two owners because of the greatly lessened cost of delivery of lead ore to the Iron Mountain Railroad. However, it appears that the Iron Mountain Railroad declined to give the St. Joseph & Desloge Railway a satisfactory division of rates, with the result that in May, 1887, the St. Joseph Lead Company, which, meanwhile, had bought out the Desloge Lead Company, started construction of the Mississippi River and Bonne Terre Railway. The line was located from Bonne Terre to Riverside, Missouri, from which point the Lead Company could use either the Mississippi River or the Iron Mountain (See map attached hereto as "Exhibit A"). The line was originally cheaply constructed as a narrow gauge railroad. For several years after its completion to Riverside, a barge line was operated between that point and the City of St.

— 19883 —

Louis. This appears to have secured the desired divisions from the Iron Mountain, and the subsequent profitableness of the Mississippi River and Bonne Terre Railway would indicate that the divisions secured were favorable to that line.

The line was opened from Bonne Terre to Riverside, March 10, 1890.

The extension south to Doe Run, Missouri, was started soon thereafter and was completed to Doe Run Junction in June, 1892, and the line to Doe Run was opened in the same year. The latter was constructed by the Doe Run Lead Company and was purchased by the Mississippi River and Bonne Terre Railway Company in September, 1893.

The gauge of the above main line was changed to standard in 1893-4.

The Crowley Branch was built between 1893 and 1900, the Mitchell, between 1898 and 1906, and the Hoffman (Leadwood Branch), between 1899 and 1902. At the time of the purchase by the Missouri-Illinois Railroad Company of the capital stock of the Mississippi River and Bonne Terre Railway, hereinafter referred to, the St. Joseph Lead Company was the owner of all of said stock except one share.

#### B. Missouri-Illinois Railroad Company.

The Missouri-Illinois Railroad Company was incorporated under the laws of Missouri January 8, 1921. On February 15, 1921, it purchased at receivership foreclosure sale the railroad of the Illinois Southern Railway Company extending from Salem, Illinois, to Bismarck, Missouri, crossing the Mississippi River by means of a car ferry.

UPRR-001748

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As of January 1, 1929, the Missouri-Illinois Railroad Company, for a cash consideration of \$3,324,889.17, purchased 29,999 of the 30,000 shares of the capital stock of the Mississippi River and Bonne Terre Railway Company issued and outstanding, and as of the same day, leased all of the property of the latter Company for a period of ninety-nine years at a rental of \$10.00 per year.

As of the same date, to-wit, January 1, 1929, and to enable it to raise the money with which to purchase the Bonne Terre stock, the Missouri-Illinois issued and sold its First Mortgage 5% Bonds in the amount of \$3,500,000, maturing January 1, 1959, secured by a mortgage upon all of its property and by the pledge of said 29,999 shares of the Bonne Terre stock purchased and the aforesaid ninety-nine year lease.

As of the same day, to-wit, January 1, 1929, the Missouri Pacific Railroad Company purchased from the stockholders of the Missouri-Illinois Railroad Company, 51% of all of its issued and outstanding capital stock, to-wit, 11,475 of the 22,500 issued and outstanding shares of stock of said Missouri-Illinois Railroad Company. In connection with said purchase of said stock, the stockholders of the Missouri-Illinois Railroad Company, by Option and Escrow Agreement between said stockholders, the Missouri Pacific Railroad Company and the St. Louis Union Trust Company, (the latter as depository) escrowed with the St. Louis Union Trust Company of St. Louis the remainder of said Missouri-Illinois stock, to-wit, 11,025 shares, and gave and granted to the Missouri Pacific Railroad Company the right and option to purchase the same at any time before January 1, 1959, upon the

— 19885 —

terms and conditions in said Agreement set forth. Said Option and Escrow Agreement is still in full force and effect.

Also in connection with the aforesaid purchase by the Missouri Pacific of the aforesaid 51% of the issued and outstanding capital stock of the Missouri-Illinois, a so-called Joint Agreement, dated December 26, 1929, between the stockholders of the Missouri-Illinois as First Parties, the stockholder of the Mississippi River and Bonne Terre Railway as Second Party, and the Missouri Pacific Railroad Company as Third Party, was executed, by paragraphs numbered 7 and 8 of Article Third of which, it was provided and agreed as follows:

“(7) Missouri Pacific hereby agrees (subject to its acquisition of 51% of the Illinois Company's capital stock, as above provided) as follows:

(a) That so long as the parties hereto of the first part or any of them shall own the remainder or 49% of the said capital stock of the Illinois Company, (1) Missouri Pacific will cause the Illinois Company to be operated as a separate line of railroad, comprising the present railroads of the Bonne Terre and Illinois Companies, and in so far as practicable, to maintain the present routes and present divisions, and to continue the policy of establishing rates and divisions as conditions may require, to the end that the Illinois Company shall be operated solely in the interests of all of its stockholders; and (2) Missouri Pacific will cause the Illinois Company to maintain and preserve all and every part of its properties, including the properties of the Bonne Terre Company controlled by the Illinois Company through its ownership of capital stock of the Bonne Terre

UPRR-001749

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— 19886 —

Company and through the said lease from Bonne Terre Company to Illinois Company, and to keep the same in as thorough repair, working order and condition and as adequately supplied with motive power, rolling stock and equipment, as shall prevail in connection with said properties on the date of the Illinois Company's said First Mortgage, and to make in and to said properties, from time to time, all the needful repairs, renewals, retirements, replacements, betterments and improvements required to be made thereto, to the end that the business and traffic of the Illinois Company shall at all times be conducted in a safe, orderly and expeditious manner; and (3) the general earnings of the Illinois Company which otherwise might be available for dividends shall not be depleted by the Missouri Pacific, through its control of the capital stock of the Illinois Company, for charges for general supervision, such as Executive, Traffic, Legal, Accounting, Purchasing or Engineering service, rendered the Illinois Company, provided, however, that in case any such services are rendered by the Missouri Pacific's staff in connection with the operation of the Illinois Company, the Illinois Company shall pay a reasonable charge therefor when the same are capable of specific allocation to the Illinois Company, and for such services as cannot be specifically so allocated it shall pay a reasonable amount on the basis of an equitable apportionment between the Missouri Pacific and the Illinois Company; and (4) any moneys advanced to Illinois Company by the Missouri Pacific for Additions and Betterments shall bear interest at 5% per annum and said interest shall be paid prior to the declaration of any dividends on the capital stock of the Illinois Company.

— 19887 —

(b) That the Missouri Pacific will cause the Illinois Company to maintain, as the Bonne Terre Company has heretofore maintained, industrial tracks within the plants of the several parties hereto of the first part where the railroad's locomotives operate, at the expense of the several parties hereto of the first part; bills to be rendered monthly on the basis of the actual cost of labor and materials.

(c) That Missouri Pacific will cause Illinois Company to protect the pension, annuities, group life insurance and seniority rights of such employees of the Bonne Terre Company and of the Illinois Company as shall be retained in service by the Illinois Company.

(8) The parties of the first part agree (subject to the acquisition by Missouri Pacific of 51% of Illinois Company's capital stock, as above provided) that so long as the Missouri Pacific shall own 51% of the capital stock of the Illinois Company, and shall hold the option to purchase the remaining 49% of said stock, as hereinabove provided, the several parties hereto of the first part will use their influence to route and cause to be routed all business controlled by them respectively, or the routing of which they may be able to influence, so that said business will continue to move over the lines of the Illinois Company, and also will be so routed wherever practicable, as to give Missouri Pacific Lines their long haul and best revenues, provided, however, that the rate is not increased or the revenue of the Illinois Company is not decreased thereby, and provided further, that the Missouri Pacific will, whenever possible, route via the Illinois Company all the tonnage which it consistently can so route, having due regard to the Missouri Pacific's revenue."

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— 19888 —

The present mileage of the Missouri-Illinois is 123.2, and of the Mississippi River and Bonne Terre, 48.5, or a total operating mileage of 171.7 (See map "Exhibit A" attached).

The aforesaid Mortgage of the Missouri-Illinois obligated the Missouri-Illinois Railroad Company, and said Company covenanted and agreed, to pay into a purchase fund for the retirement of the aforesaid Bonds secured by said Mortgage, on January 1, 1930, and on or before January 1 and July 1 in each year, the sum of \$50,000.00, to be applied by the Purchase Fund Agent of the Company to the purchase of said bonds at private sale or in the open market, at the best prices obtainable, not exceeding 105% of the principal amount thereof plus the amount of interest thereon accrued to the time of such purchase.

Following the purchase by the Missouri Pacific of 51% of the issued and outstanding capital stock of the Missouri-Illinois as aforesaid and until the Missouri Pacific was adjudged a bankrupt under Section 77 of the Federal Bankruptcy Act, March 31, 1933, in Cause No. 6935, by the District Court of the United States, Eastern Division, Eastern Judicial District of Missouri, the Missouri Pacific Railroad Company supervised, managed and controlled the Missouri-Illinois Railroad Company by virtue of its stock ownership, and pursuant to and in compliance with the requirements of the aforesaid paragraphs Nos. 7 and 8 of Article Third of the above-mentioned Joint Agreement, and throughout the trusteeship of the Missouri Pacific Railroad Company in said Cause No. 6935, the Missouri-Illinois has been controlled and managed in conformity with the requirements of said paragraphs

— 19889 —

Nos. 7 and 8 of said Joint Agreement, and the provisions of said paragraphs still remain and will continue to remain in full force and effect.

#### Bankruptcy:

On July 1, 1933, \$2,737,500.00 of the aforesaid Missouri-Illinois First Mortgage 5% Bonds were outstanding. Interest thereon amounting to \$68,437.50 became due, as well as the obligation to pay \$50,000.00 into the aforesaid purchase fund. Being unable to make these payments, the Missouri-Illinois Railroad Company, on June 26, 1933, filed its Petition in the aforesaid Missouri Pacific Railroad Company bankruptcy reorganization proceedings, No. 6935, in the District Court of the United States, Eastern Division, Eastern Judicial District of Missouri, alleging that it was without sufficient funds to pay and discharge its obligations and was unable to meet its debts as they matured, and prayed that an Order be entered approving said Petition as properly filed by it under Section 77 of the Federal Bankruptcy Act and that it be allowed to effect a Plan of Reorganization in connection with or as a part of the Plan of Reorganization of the Missouri Pacific Railroad Company. On June 30, 1933, the United States District Judge in said proceeding No. 6935 entered his Order approving said Petition as being properly filed under said Section 77 and in the proceeding in which the Petition of the Missouri Pacific Railroad Company had been filed, and appointing L. W. Baldwin and Guy A. Thompson temporary Trustees as of the beginning of business July 1, 1933, and on July 25, 1933, the appointment of said Trustees was made permanent. On December

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26, 1935, L. W. Baldwin resigned as Trustee, and the undersigned Guy A. Thompson was continued as sole Trustee by Order of court of that date.

#### Condition of Property on July 1, 1933.

For some years prior to 1933, Missouri-Illinois revenues, both gross and net, had declined. Only a part of this decline was due to the general business depression which began in the fall of 1929. An important part was the effect of certain basic changes in the methods of operation of certain important industries which furnished Missouri-Illinois a large part of its traffic. Among these changes was the substitution of natural gas for coal by the Pittsburgh Plate Glass Company at its Crystal City, Missouri, plant, the closing of the Rivermines Steam Power Plant in favor of electricity purchased from the Bagnell Water Power Plant, both of which changes reduced the coal traffic, and the completion of underground rail connections between the several shafts of the mines of the St. Joseph Lead Company whereby crude ore, which formerly was moved by Missouri-Illinois from these shafts to the five concentrating mills, was (and still is) handled underground to these mills, thus eliminating haul by Missouri-Illinois. These changes, as well as the diversion of passenger and other traffic to the highways, justified the conclusion that unless something wholly unforeseen developed, the peak in Missouri-Illinois revenues had been passed and the future of that property was not bright.

Consistent with this outlook, expenditures had been restricted to essential maintenance immediately necessary. Expenditures calculated to result only in long time economies had been largely discontinued.

— 19891 —

The beginning of the trusteeship thus found the property in fair condition physically, but with traffic on the decline and prospects not bright for a return to the level of former years.

However, 1933 proved to be the low year in revenues as indicated in the tabulation below:

Year	Total Operating Revenue
1923 .....	\$2,171,419.68
1924 .....	2,194,322.61
1925 .....	2,286,686.32
1926 .....	2,180,766.14
1927 .....	2,275,267.37
1928 .....	2,193,094.14
1929 .....	2,324,095.49
1930 .....	1,814,372.69
1931 .....	1,323,039.64
1932 .....	875,561.08
1933 .....	850,167.57
1934 .....	959,753.43
1935 .....	1,053,296.19
1936 .....	1,173,414.67
1937 .....	1,476,178.44
1938 .....	1,167,658.25
1939 .....	2,251,238.20
1940 .....	2,238,527.23
1941 .....	2,667,203.24
1942 .....	3,323,343.41
1943 .....	3,240,260.46

The declines in coal and crude ore traffic mentioned above, are to be noted in "Exhibit B" attached hereto. In spite of greatly increased industrial activity, the 1943 revenues for these commodities were much less than in 1929. However, these losses have been more than replaced by increases in other commodities.

#### Improved Traffic Prospects.

Important of the increases is that of high grade lime from the plants at Ste. Genevieve, which are served exclusively by Missouri-Illinois. Because of its purity, this lime is in demand throughout the country (it has moved even to Canada, Panama and to South Amer-

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# EXHIBIT 20

Certificate Number R.R. 354

1075

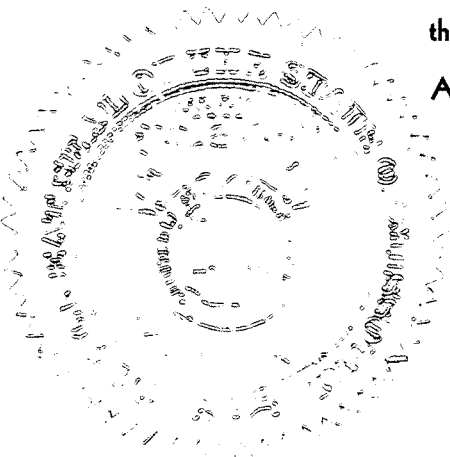


TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

WHEREAS, Articles of Dissolution and Articles of Liquidation duly signed and verified of  
Mississippi River and Bonne Terre Railway  
have been filed in the office of the Secretary of State on the 25th day of  
September, A. D. 1945, as provided by "The General and Business Corporation  
Act of Missouri."

NOW, THEREFORE, I, Wilson Bell, Secretary of State of the State  
of Missouri, by virtue of the powers vested in me by law, do hereby issue this Certificate of Dissolution.

IN TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed  
the Great Seal of the State of Missouri. Done at the City of Jefferson  
this 25th day of September  
A. D. 1945.



Wilson Bell

SECRETARY OF STATE

R. J. Harris

CHIEF CLERK

# EXHIBIT 21



1075

ARTICLES OF DISSOLUTION  
OF  
MISSISSIPPI RIVER AND BONNE TERRE RAILWAY

L. W. Baldwin, of lawful age, being duly sworn, states that he is President of Mississippi River and Bonne Terre Railway, and that the following facts are true, to-wit:

(1) The name of the corporation is Mississippi River and Bonne Terre Railway, with principal office at Bonne Terre, Missouri.

(2) The names and respective addresses of its officers and directors are as follows:

OFFICERS

L. W. Baldwin, President . . . 210 N. 13th Street, St. Louis, Mo.  
M. Eckert, Vice-President . . . 210 N. 13th Street, St. Louis, Mo.  
A. T. Cole, Secretary . . . 210 N. 13th Street, St. Louis, Mo.  
E. G. Wagner, Treasurer . . . 210 N. 13th Street, St. Louis, Mo.  
T. T. Railey,  
General Counsel . . . 210 N. 13th Street, St. Louis, Mo.

DIRECTORS

L. W. Baldwin . . . . . 210 N. 13th Street, St. Louis, Mo.  
R. C. White . . . . . 210 N. 13th Street, St. Louis, Mo.  
M. Eckert . . . . . 210 N. 13th Street, St. Louis, Mo.  
A. J. Sevin . . . . . Grant Bldg., Pittsburgh, Pa.  
W. G. Patton . . . . . 250 Park Ave., New York, N. Y.  
Clinton H. Crane . . . . . 250 Park Ave., New York, N. Y.  
(One Vacancy)

SEP 17 1945

(3) A copy of the resolution of the shareholders authorizing the voluntary dissolution of the corporation follows, to-wit:

*Thomas P. Bee*  
Secretary of State

"Whereupon, after full discussion and on motion duly made and seconded, it was unanimously

"RESOLVED, That subject to approval and authorization by the Interstate Commerce Commission, the offer of the Missouri-Illinois Railroad Company as set out in letter from the President of that company dated February 27, 1945, and also set out in the resolution of the Board of Directors of this company dated February 27, 1945, a copy of which resolution is hereinabove set out, be and same is hereby accepted; and the President of this company, L. W. Baldwin, or the Vice-President of this Company, W. G. Vollmer, or either of them, is hereby authorized for the consideration set forth in said letter, to convey to the Missouri-Illinois Railroad Company all of the railroads of this company, approximately 46 miles in length, extending from Riverside, Missouri, to Derby, Missouri, and from Hoffman Junction, Missouri, to Hoffman, Missouri, together with all other property of this company of whatever kind, real or personal, and wherever situated, and all of the rights and franchises of this company (except its franchises to be

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a corporation). Such conveyance shall be made by a deed in which the Missouri-Illinois Railroad Company shall join, for the purpose of cancellation by that company of the outstanding unsecured indebtedness of said Mississippi River and Bonne Terre Railway to the Missouri-Illinois Railroad Company, and the assumption by such last named company of all other obligations, debts, and liabilities, if any, of Mississippi River and Bonne Terre Railway.

"RESOLVED FURTHER, That L. W. Baldwin, President, or W. G. Vollmer, Vice-President of this company, be and he is hereby authorized for and in the name of this company to make, verify, and file with the Interstate Commerce Commission such application as may be necessary in order that the conveyance of the property and franchises of this company to the Missouri-Illinois Railroad Company, hereby authorized, be approved and authorized by the Interstate Commerce Commission.

"RESOLVED FURTHER, That upon delivery of said deed of conveyance, the Board of Directors, the President, or the Vice-President of this Company be and each of them is hereby directed to take or to cause to be taken from time to time such action as may be necessary in order that the charter granted to this company by the State of Missouri be surrendered and this company be dissolved and all its affairs wound up."

(4) The number of shares outstanding entitled to vote for or against such resolution of the shareholders was 30,000, and all of said shares were voted in favor of the dissolution of the corporation.

(5) By deed dated July 31, 1945, Mississippi River and Bonne Terre Railway, with approval of the Interstate Commerce Commission, conveyed all of its property to Missouri-Illinois Railroad Company, pursuant to the aforesaid resolution.

  
President

ATTEST:

  
Secretary.

FILED

SEP 17 1945

STATE OF MISSOURI )  
: SS  
CITY OF ST. LOUIS )



Secretary of State

Subscribed and sworn to before me this 14th day of Sept., 1945.

  
Notary Public

My commission expires September 15, 1948.

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SEP 17 1945

James B. Bee  
Secretary of State

3A

STATE OF MISSOURI, { ss.  
CITY OF ST. LOUIS.

I, the undersigned, Recorder of Deeds for said City and State, do hereby certify that the foregoing and annexed instrument of writing was filed for record in my office on the 17 day of Sept A. D. 1945, at 11-30-10 o'clock A. M., and truly recorded in Corporation Book 165 Page 28

Witness my hand and official seal on the day and year aforesaid

Ruby Koelling Recorder

# EXHIBIT 22

INTEGER LAW CORPORATION

633 WEST FIFTH STREET • FLOOR SIXTY SEVEN • LOS ANGELES, CA 90071

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GREGORY EVANS  
ATTORNEY AT LAW  
PHONE: (213) 892-4488  
EMAIL: [gevans@integerlegal.com](mailto:gevans@integerlegal.com)  
[WWW.INTEGERLEGAL.COM](http://WWW.INTEGERLEGAL.COM)

June 20, 2013

John F. Barg  
Barg Coffin Lewis & Trapp LLP  
350 California Street, 22nd Floor  
San Francisco, California 94104 -1435

Re: *Union Pacific and Asarco*

Dear Mr. Barg:

Thank you for your letter of June 18, 2013. While we have not been directly involved in the sampling referred to in your letter, we provide the following response on behalf of Asarco in an effort to address Union Pacific's stated concerns. To the extent Asarco's response does not adequately or clearly address Union Pacific's concerns, we invite you to write or call in order that we may resolve this matter informally.

First, and most importantly, we are assured that none of the sampling you have referenced occurred on Union Pacific's private property. Asarco is well aware of the safety issues associated with rail lines – through its indirect relationship with Union Pacific by virtue of Grupo Mexico ownership, and through Asarco's direct relationship with Union Pacific as a shipper on the railroad for over a century. Asarco, including its affiliates and its contractors, does not intend to, and will not conduct any sampling of any sort upon any Union Pacific lines or private property without obtaining Union Pacific's permission or pursuant to all procedures and requirements that may apply.

Asarco has not at any time "trespassed" upon Union Pacific property in the past. The results of limited surface sampling that is referenced in reports sent at Asarco's direction to the United States Environmental Protection Agency and state environmental regulators come from the inspection of public property, not Union Pacific's rail lines that are in use or its private property. Asarco only tested abandoned rail lines and "rails-to-trails," former UP (and UP predecessor) rail lines that have been converted for public, recreational uses. Where references have been made in reports or letters to "active rail lines," the inspection of ballast and soil was, at all times, performed well off the Union Pacific owned right-of-way and upon property (or streams and waterways) adjacent to Union Pacific's railroad.

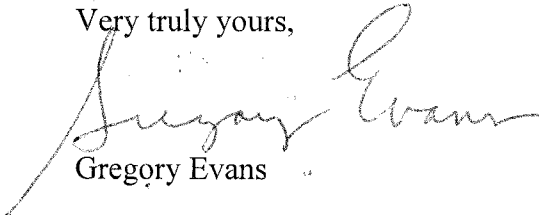
John F. Barg  
June 20, 2013  
Page 2

We trust that neither your firm nor the Union Pacific Railroad has accused Asarco of trespassing in order to deter Asarco from reporting to United States and state regulators the very serious conditions discovered upon abandoned, former Union Pacific railroad, donated "rails-to-trails," and property adjacent to active railroad where contaminated ballast exists or has washed into public rivers, streams and other waterways. We also hope that Union Pacific's incorrect accusations are not intended to silence Asarco about the public impact of the contamination discovered upon public property.

Asarco has taken careful steps to gather information from public property in order to determine whether Union Pacific's contamination threatens the \$1.79 billion, nationwide environmental remedy it has funded, voluntarily. Our preliminary assessment is that it does, in fact, threaten the Asarco financed remedies around the United States.

In a public statement by John C. Cruden, Deputy Assistant Attorney General with the Environment and Natural Resources Division of the United States Department of Justice, referring to Asarco's voluntary \$1.79 billion cleanup of sites around the country, EPA has stated "this demonstrates that just because a company goes into bankruptcy doesn't mean it will avoid its responsibilities." *See New York Times*, December 11, 2009. Asarco does not intend to avoid its environmental responsibilities. As a stakeholder in the outcome of environmental cleanup projects funded around the United States, Asarco hopes that Union Pacific will work with it, and regulators, to address an apparent, serious source of continuing contamination that threatens the Asarco's financed remedies. To that end, Asarco would appreciate the opportunity to meet with Union Pacific to discuss the impact of its findings upon the Asarco financed cleanup.

Very truly yours,



Gregory Evans

# EXHIBIT 23

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII  
901 NORTH 5<sup>TH</sup> STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF:

St. Francois County Mining Area

St. Francois County, Missouri

Docket No. CERCLA-07-2004-0167

THE DOE RUN RESOURCES  
CORPORATION,

Respondent.

ADMINISTRATIVE ORDER ON  
CONSENT FOR REMOVAL ACTION

Proceeding Under Sections 104, 106(a), 107  
and 122 of the Comprehensive  
Environmental Response, Compensation,  
and Liability Act, as amended, 42 U.S.C. §§  
9604, 9606(a), 9607 and 9622

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#### **IV. FINDINGS OF FACT**

10. The first recorded lead mining in St. Francois County occurred in the early 1700s. Mining operations were continuous in the area from the mid-1700s until the mid-1970s. Over the years, the mines, milling operations, and associated facilities in the county became known as Missouri's "Old Lead Belt".

11. Over 8 million tons of lead concentrate were produced in the Old Lead Belt during the period from 1864 to 1970. The by-product of the mining process resulted in the production of mine waste materials called chat and tailings. An estimated 250 million tons of chat and tailings were generated over this 100-plus years of mining operations.

12. Chat is fine to coarse dolomite rock fragments produced during the early milling process in which density separation was used to separate the ore. Chat was transported mechanically by conveyor and disposed of in large piles at heights generally greater than 100 feet above the surrounding topography.

13. Tailings were produced by a wet separation process. Sometimes referred to as fines, tailings typically involve smaller fragment fines, silts, silty sands, and clay. The tailings were disposed of by hydraulically depositing them into impoundments known as tailings ponds.

14. In the St. Francois County Mining Area, there are six distinct chat pile and tailings pond areas: National, Elvins, Bonne Terre, Federal, Desloge, and Leadwood, which are the subject of this Order. These areas are shown on the map which is attached to this Consent Order as Attachment 3. Following is an estimate of the acreage covered by the chat piles and tailings ponds in these eight areas:

<u>Area</u>	<u>Chat Pile Acres</u>	<u>Tailings Pond Acres</u>
National	44	108
Elvins	72	77
Bonne Terre	39	306
Federal	43	1005
Desloge	95	275
Leadwood	35	528

15. The physical and chemical nature of the mine waste materials at these areas is similar. Analytical results from samples taken from the mine waste materials show that the materials contain lead, zinc, and cadmium. Following are the mean and maximum

concentrations of lead, cadmium, and zinc, in  $\mu\text{g/g}$ , which have been found in samples of the waste materials from the six areas:

<u>Area</u>	<u>Lead</u>		<u>Cadmium</u>		<u>Zinc</u>	
	<u>Mean</u>	<u>Max</u>	<u>Mean</u>	<u>Max</u>	<u>Mean</u>	<u>Max</u>
National	3508	9283	7	87	457	5055
Elvins	4392	11600	103	202	5482	11900
Bonne Terre	3515	7010	13	29	541	967
Federal	885	210000	6	170	29	34100
Desloge	2215	13000	22	270	1044	13000
Leadwood	2444	17000	267	1870	5009	25800

16. Numerous environmental investigations have been conducted in the St. Francois County Mining Area in recent years. These investigations show that mine waste materials containing lead, cadmium, and zinc have migrated from the eight disposal areas via wind erosion, bank erosion, storm water runoff, and leachate. As a result, some surface waters, sediments, and soils in the area contain elevated levels of lead, cadmium, and zinc.

17. In April 1995, Fluor Daniel Environmental Services on behalf of The Doe Run Resources Corporation prepared an "Initial Remedial Investigation Report" which summarizes the history of mining activities in the St. Francois County Mining Area, describes the eight chat pile and tailings pond areas in detail, and compiles and evaluates the environmental data which has been collected to date in the St. Francois County Mining Area.

18. In May 1997, the Missouri Department of Health (MDOH) released a draft Lead Exposure Study of children in the Old Lead Belt. The MDOH Study included sampling children's blood, sampling environmental media such as soil and dust, and questioning residents about their lifestyle as it related to lead exposure. The Study compared the information in the Old Lead Belt of St. Francois County to information collected during the Study on a control area, Salem, Missouri, located outside the area of concern.

19. The results of the Study revealed lead concentrations in residential yards located near the mine waste areas in excess of 10,000 mg/kg. In the Old Lead Belt, about 17% of the children tested showed a blood lead level of more than 10  $\mu\text{g/dl}$  whereas only about 3% of the children in Salem were elevated. According to the U.S. Centers for Disease Control and Prevention (CDC), a blood lead concentration of 10  $\mu\text{g/dl}$  presents a health concern. The Missouri Department of Health and Senior Services reported that the 2002 calendar year blood lead testing data showed that 9% of the children tested in St. Francois County showed a blood lead level of more than 10  $\mu\text{g/dl}$ .

20. A study concerning St. Francois County entitled "Source Contribution of Lead in House Dust From a Lead Mining Waste Superfund Site" published in 1998 identified that the sources of lead in house dust was 23% from lead paint and 21% from mining waste.

21. Concurrently with the MDOH Study, EPA released its strategy to reduce the health impacts in the area from lead that is present in the environment as a result of mining-related activities. The three key aspects of the strategy are source control, long term remedial control, and an interim program to reduce currently elevated blood-lead levels. The interim program consists of outreach to test as many children as possible followed by intervention to reduce any elevated blood-lead levels, as well as soil testing and removal.

22. In April 2000, EPA and The Doe Run Resources Corporation voluntarily entered into an Administrative Order on Consent for the St. Francois County Mining Area requiring The Doe Run Resources Corporation to implement a soil testing and removal program and a blood lead testing and control program within the St. Francois County Mining Area. The program will expire in April 2004.

23. In March 2002, The Doe Run Resources Corporation submitted a Remedial Investigation Report which compiles and evaluates the environmental data which has been collected to date in the St. Francois County Mining Area.

24. Nearby residents may face actual and/or potential exposure to lead from the mine waste via ingestion, skin contact, and inhalation. Exposure to lead can increase the risk of future adverse health effects such as damage to the central nervous system, peripheral nervous system, and kidney and blood disorders. Young children are particularly susceptible to adverse health effects due to exposure to lead.

25. Contamination by, and exposure to, cadmium and zinc are being addressed in other investigation and response actions.

26. The Doe Run Resources Corporation is a corporate successor of St. Joe Lead Company, who conducted mining operations in the St. Francois County area and who disposed of mine wastes containing lead, zinc, and cadmium at, and/or who currently owns portions of, each of the six mine waste areas described above.

27. The Doe Run Resources Corporation is a New York Corporation registered to do business in the State of Missouri.

28. Other persons who may be current owners, operators, or successors to operators who disposed of mine waste containing lead, zinc, and cadmium in the St. Francois County area, but who are not parties to this Order, include ASARCO, Inc.; NL Industries, Inc.; the State of Missouri Division of State Parks; the St. Francois County Environmental Corporation; and

parties who purchased or removed chat or other mine wastes and placed it on land in the St. Francois County Mining Area or otherwise used it for commercial purposes.

29. Much of the property comprising the six major mine waste areas, and adjacent properties to which contaminants may have migrated, is owned by persons other than Respondent. Among these persons are individuals, profit corporations, not-for-profit corporations, and government entities. Access to some of these properties will be necessary in order to complete the work required by this Order.

#### **V. CONCLUSIONS OF LAW AND DETERMINATIONS**

30. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

a. Each of the six mine waste areas identified in the Findings of Fact herein is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. Lead is found at each of the six mine waste areas identified in the Findings of Fact herein and is a "hazardous substance" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), because:

- i. Respondent is the "owner" and/or "operator" of portions of five of the six facilities, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), and/or
- ii. Respondent was the "owner" and/or "operator" of the facilities at the time of disposal of hazardous substances at the facilities, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

e. The presence of hazardous substances at the six mine waste areas or the past, present or potential migration of hazardous substances currently located at or emanating from the six mine waste areas, constitutes an actual or threatened "release" of hazardous substances from the facilities as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

**Attachment 1**  
**STATEMENT OF WORK**  
**Removal Action for Surface Soil Characterization and Removal**  
**St. Francois County Mine Tailings Sites**

Objective

The objectives of the removal action to be performed by the Respondent are as follows:

1. To provide for a surface soil characterization program for the residents within the boundaries shown on Exhibit A to this SOW.
2. To provide a surface soil replacement program for any yard or child high use area within the boundaries shown on Exhibit A to this SOW where lead concentrations exceed 400 parts per million (ppm). The boundaries shown on Exhibit A are meant to represent the area within 500 feet of chat and tailings waste, 1,000 feet from four identified smelters/calciners, and 100 feet from mine shafts.

Work to Be Performed

1. Soil Characterization and Health Education

For any residence or child high use area within the boundaries shown on Exhibit A that have not been previously sampled, Respondent shall characterize surface soils to determine the lead concentration present. In addition, Respondent shall characterize surface soils to determine the lead concentration present for any residence located within the boundaries shown on Exhibit B which has not been previously sampled, where Respondent is notified that an EBL child under 72 months of age resides. The sampling will be conducted in accordance with an EPA-approved sampling plan. Multi-aliquot soil samples will be collected from the upper 1 inch of soil in each quadrant of a yard. Separate multi-aliquot soil samples will be collected from drip zones, down spout outfalls, driveways, and child play areas. Analysis can be performed using an XRF instrument with 5% of the samples being submitted to a laboratory for analysis. The Respondent shall prove, in advance, to EPA's satisfaction, that each laboratory it uses is qualified to conduct the proposed work. The laboratory shall have and follow a quality assurance program.

Data shall be provided to EPA in both paper copy and in a Geographical Information System (GIS) format. All visits to homes will be documented and entered into the GIS including those sampled, no one at home, and refusals to allow sampling (including reason given, if any.) A personalized package of EPA-approved educational material and sampling results shall be provided to the homeowner in a "Sampling Results Letter" within 2 weeks of Respondent's receipt of sampling results. Parents or guardians of young children should be encouraged to have their child scheduled for blood lead testing.